

Selvaraj vs Steephen

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Court : Kerala

Decided On : Jul-31-2024

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/2357/2015

Appellant : Selvaraj

Respondent : Steephen

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
WEDNESDAY, THE 31ST DAY OF JULY 2024 / 9TH SRAVANA, 1946
CRL.MC NO. 2357 OF 2015 CRIME NO.175/2011 OF POZHIIYOOR
POLICE STATION, THIRUVANANTHAPURAM AGAINST THE
ORDER/JUDGMENT DATED IN CC NO.976 OF 2013 OF JUDICIAL
MAGISTRATE OF FIRST CLASS -II, NEYYATTINKARA
PETITIONER/1ST ACCUSED: SELVARAJ S/O.ANTONY NADAR,
ROSE VILASAM BUNGLOW, CHEMMANTHATTUVILA, AIYRA P.O.,
PARASSALA, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM
DISTRICT. BY ADV SRI.GEORGE MATHEWS
RESPONDENTS/COMPLAINANT & STATE: 1 STEEPHEN

S/O.ANTONY NADAR, AGED 56 YEARS, S.V.BHAVAN, CHEMMANTHATTUVILA, AIYRA P.O., PARASSALA, NEYYATTINKARA TALUK, THIRUVANANTHAPURAM DISTRICT, PIN - 695 502. 2 THE STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY ADV. SRI. RENJITH T.R., SENIOR PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 31.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

----- Dated this
the 31st day of July, 2024

ORDER

This Criminal Miscellaneous Case is filed to quash the proceedings in C.C. No.976/2013 on the file of Judicial First Class Magistrate Court-II, Neyyattinkara.

2. The above case is a private complaint filed

by the 1st respondent alleging offences punishable under Sections 307, 379, 294(b), 394, 447 and 506(ii) r/w 34 IPC. The contention of the petitioner is that, based on the same set of facts, the Police registered a case as evident by Annexure-A2 FIR and the Police referred the matter as evident by Annexure-A3 report. Without considering Annexure-A3 report, the learned Magistrate took cognizance based on Annexure-A4 complaint under Section 379, 394, 447 and 506(ii) r/w 34 IPC, is the submission. According to the petitioner, in the light of the settled position, the Magistrate is bound to consider the refer report also before considering the second complaint based on the same set of facts. Hence, this Criminal Miscellaneous Case is filed.

3. Heard the learned counsel for the petitioners and the learned Public Prosecutor. Eventhough, notice is served to the 1 st respondent, there is no appearance for the 1st respondent.

4. After hearing the counsel for the

petitioner for some time, I think, there is some force in the argument. When the Police referred the matter and thereafter a complaint is filed, the learned Magistrate is duty bound to consider the refer report also while taking cognizance based on the complaint. This Court in *Parameshwaran Nair v. Surendran* [2009 (1) KLT 794] considered this point in detail. The relevant portion of the above

judgment is extracted hereunder:

12. If the original complaint stood dismissed by the acceptance of the refer report submitted after investigation the protest complaint if any filed can only be treated as a second complaint. If so, the protest complaint will lie only if there was a manifest error or manifest miscarriage of justice in the earlier order or new facts which the complainant had no knowledge of or with reasonable diligence could not have brought forward in the previous proceedings is adduced. When this is the legal position, it is not lawful to the Magistrate to ignore the final report submitted by the police under Section 173(2) of the Code. Magistrate is bound to consider the final report and decide which of the options available to him is to be exercised.

5. Similarly in *Kader v. State of Kerala* [1999 (3) KLT 55], this Court considered the same point which is extracted hereunder:

7. The Court noted that the scope of enquiry under S.202 is the ascertainment of the truth or falsity of the allegations made in the complaint on the materials placed by the complainant before the Court for the limited purpose of finding out whether the prima facie case for issue of process has been made out and for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. Nevertheless, the Court has a duty to protect the interest of the absent accused also because at the particular stage, the accused has no say in the matter and the matter is

decided without notice to him. It is, therefore, open to the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent the accused therein from being called upon to face obviously frivolous complaint and to find what material there is to support the allegations made in the complaint. The Magistrate has a duty not only to bring to book a person or persons against whom grave allegations are made in the complaint but also to protect the interest of the absent accused in such matters. What all matters he should take into consideration to arrive at the conclusion that he should take cognizance of the offence, will depend upon the facts and circumstances of each

case. He has necessarily to consider the allegations made in the complaint and the statement of the complainant recorded under S.200 Cr.P.C. as also of the witnesses examined under S.202 of the Cr.P.C. Along with that, he has also to consider the result of enquiry or investigation, if any, held by the police. It cannot be said that the said data is not an essential factor. The consideration of the materials under S.202 of the Cr.P.C. is not an empty formality and cannot be done in a perfunctory or mechanical manner or by

adopting a superficial approach.

6. In the light of the principles laid down in

the above decisions, I think, the order taking cognizance is to be set aside and the learned Magistrate can be directed to reconsider the matter. Therefore, this Criminal Miscellaneous Case is disposed of with the following directions:

1. The order taking cognizance based on Annexure-A4 complaint is set aside.

2. The Judicial First Class Magistrate Court-II,

Neyyattinkara is directed to reconsider the matter in the light of Annexure-A3 refer report and also in the light of the dictum laid down in Parameswaran Nair's and Kader's cases (supra). Sd/- P.V.KUNHIKRISHNAN JUDGE nvj APPENDIX OF

CRL.MC 2357/2015 PETITIONER ANNEXURES

ANNEXURE-A1:A TRUE COPY OF THE COMPLAINT C.M.P.NO.1451/11 DATED 03.03.2011 FILED BY FIRST RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, NEYYATTINKARA. ANNEXURE-A2:A TRUE COPY OF THE FIR IN CRIME NO.175/2011 OF THE POZHIOOR POLICE STATION. ANNEXURE-A3: TRUE COPY OF THE REFER CHARGE DATED 31/05/2011 IN CRIME NO.175/2011 OF THE POZHIOOR POLICE STATION. ANNEXURE-A4: A TRUE COPY OF THE SAID COMPLAINT DATED 31.08.2011 FILED BY FIRST RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, NEYYATTINKARA.

RESPONDENTS EXHIBITS: NIL //TRUE COPY// PA TO JUDGE

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