

Joseph vs Bindu

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Court : Kerala

Decided On : Jul-31-2024

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/7652/2017

Appellant : Joseph

Respondent : BINDU

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. 7652 OF 2017 CRIME NO.153/2009 OF Karunagapally
Police Station, Kollam AGAINST THE ORDER IN CC NO.211 OF 2017
OF JUDICIAL MAGISTRATE OF FIRST CLASS - I, KARUNAGAPPALLY
PETITIONER/ACCUSED: JOSEPH, AGED 61 YEARS, S/O.
VARGHESE, THREE J. VILLA, MUZHANGODI, THODIYOOR P.O,
KARUNAGAPALLY VILLAGE, KARUNAGAPALLY TALUK. BY ADVS.
SRI.M.REVIKRISHNAN SMT.MITHA SUDHINDRAN
RESPONDENTS/COMPLAINANT & STATE: 1 BINDU D/O. OMANA,
VADAKKEDATH KIZHAKKETHIL, PADA: VADAKKUMURI,

KARUNAGAPALLY VILLAGE, KARUNAGAPALLY TALUK. 2 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. - 682 031. BY ADVS. SRI.T.S.HARIKUMAR SRI.P.B.SAHASRANAMAN OTHER PRESENT: SRI.SANGEETHARAJ.N.R, PP 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.

----- CrI.M.C.No.7652 of 2017
----- Dated this the 31st day of July, 2024

ORDER

This Criminal Miscellaneous Case is filed to quash Annexure-D complaint and all further proceedings initiated pursuant to the same, which is pending as C.C.No.211/2017 before the Judicial First Class Magistrate Court, Karunagappally.

2. Annexure-D is a private complaint filed by the 1 st

respondent. It is the case of the petitioner that, police registered the case based on the same set of facts as evident by Annexure-B FIR and after investigation, police submitted a refer report as evident by Annexure-C. The grievance of the petitioner is that, without considering Annexure-C refer report, the learned Magistrate taken cognizance based on Annexure-D complaint. Hence this Criminal Miscellaneous Case.

3. Heard counsel for the petitioner and the counsel appearing for the 1st respondent. I heard the Public Prosecutor also.

4. The short point raised by the petitioner is that, while

taking cognizance based on Annexure-D complaint, the learned Magistrate is bound to consider the refer report also. This Court perused Annexures-D and E. There is nothing to show that the learned Magistrate considered the refer report

while taking cognizance based on Annexure-D. It is the duty of the learned Magistrate to consider the same.

5. 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.

6. 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 advertent 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.

7. In the light of the principles laid down in the above

decision, I am of the considered opinion that the order taking cognizance based on Annexure-D complaint is to be set aside and the learned Magistrate is to be directed to reconsider the matter, in the light of the principle laid down in the above decisions. Therefore, this Criminal Miscellaneous Case is allowed in the following manner:

a) Annexure-E order dated 07.02.2017 set aside. b) The Judicial First Class Magistrate, Karunagappally is directed to reconsider Annexure-D complaint in the light of Annexure-C refer report and also in the light of the principles laid down by this Court in *Parameshwaran Nair v. Surendran* [2009 (1) KLT 794] and *Kader v. State of Kerala* [1999 (3) KLT 55].

Sd/- P. V. KUNHIKRISHNAN JUDGE Sbna/30.07.24 APPENDIX OF CRL.MC 7652/2017 PETITIONER ANNEXURES ANNEXURE A TRUE COPY OF THE INITIAL COMPLAINT PREFERRED BY THE 1ST RESPONDENT HEREIN BEFORE THE COURT OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS, KARUNAGAPALLY. ANNEXURE B TRUE COPY OF THE F.I.R IN CRIME NO.153/2009 OF KARUNAGAPALLY POLICE STATION, KOLLAM DISTRICT. ANNEXURE C TRUE COPY OF THE REFER REPORT SUBMITTED BY THE KARUNAGAPALLY POLICE IN CRIME NO. ANNEXURE D TRUE COPY OF THE PROTEST COMPLAINT PREFERRED BY THE 1ST RESPONDENT HEREIN BEFORE THE COURT OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS, KARUNAGAPALLY AGAINST THE ACCUSED DATED 04.07.2009. ANNEXURE E TRUE COPY OF THE ORDER SHEET EVIDENCING THE PROCEEDINGS DATED 07.02.2017 BEFORE THE COURT OF THE JUDICIAL MAGISTRATE OF THE FIRST CLASS, KARUNAGAPALLY.

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