

Ashish vs Benny

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Court : Kerala

Decided On : Feb-16-2024

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : Crl.MC/8525/2016

Appellant : Ashish

Respondent : BENNY

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
FRIDAY, THE 16TH DAY OF FEBRUARY 2024 / 27TH MAGHA, 1945
CRL.MC NO. 8525 OF 2016 CRIME NO.121/2012 OF Kuruppampady
Police Station, CC PETITIONER/ACCUSED: ASHISH, AGED 19
YEARS, S/O SUNNY, VAZHAKALA HOUSE, MANJAKUZHAKARA,
RAJAKUMARI PO, RAJAKUMARI, IDUKKI DISTRICT BY
ADVS.SRUTHY N BHAT RESPONDENT/COMPLAINANT & STATE: 1
BENNY, S/O VARGHESE, KARIPRA VEEDU, PRALAYAKAD KARA,
VENGOOR WEST VILLAGE, ERNAKULAM-683546 2 STATE OF
KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM-682031 BY ADVS.SRI.PRAMOJ ABRAHAM

SRI.VINUCHAND PP SMT. MAYA M.N. THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16.02.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -:2:-

ORDER

Dated this the 16th day of February, 2024 This Crl.M.C has been filed to quash all further proceedings in C.C.No.153/2016 on the file of the Juvenile Justice Board, Ernakulam.

2. The petitioner herein is a Juvenile in Conflict with Law

(JCL) in the above case. The offences alleged against him are punishable under Sections 323, 326 and 506(ii) read with 34 of the IPC.

3. Originally, the Kuruppampady Police registered Crime

No.121/2012 against the petitioner and two others under the above Sections. The petitioner herein was shown as the accused No.2. The prosecution case in short is that the petitioner and the remaining accused on 28/1/2012 at around 7.00 p.m in pursuance of the existing civil dispute, assaulted the 1 st respondent and thereby committed the above mentioned offences.

4. The police, after investigation, filed final report referring the case as false. The respondent No.1/defacto -:3:- complainant filed a protest complaint before the Judicial First

Class Magistrate-I, Perumbavoor. The learned Magistrate took cognizance on the protest complaint for the offences punishable under Sections 323, 326 and 506(ii) read with 34 of the IPC against all the accused including the petitioner and numbered the case as C.C.No.24/2014. Thereafter the case was transferred to

the Judicial First Class Magistrate-I, Kuruppampady. While the case was pending there, the learned Magistrate entertained doubt as to the age of the petitioner and after due enquiry found that the petitioner was a juvenile on the date of commission of the offence. Therefore, the learned Magistrate split up the case

against the petitioner and forwarded the records to the Chief Judicial Magistrate, Ernakulam who in turn forwarded the case of the petitioner to the Juvenile Justice Board, Ernakulam (for short

'the JJ Board'). The JJ Board on receipt of the case records issued summons to the petitioner to appear before it and answer charges under Sections 323, 326 and 506(ii) read with 34 of the IPC. It is at that juncture, the petitioner approached this Court to quash the entire proceedings.

5. I have heard Smt. Sruthy N. Bhatt, the learned -:4:- counsel for the petitioner and Smt. M.N. Maya, the learned Public Prosecutor.

6. The learned counsel for the petitioner submitted that

the JJ Board, on receipt of the case records straight away issued summons to the petitioner without independently applying its mind to the final report and the protest complaint. The learned counsel further submitted that, the petitioner being a juvenile, the entire proceedings initiated from the inception is vitiated inasmuch as it is not in accordance with the provisions of the Juvenile Justice (Care & Protection of Children) Act, 2000 (JJ Act

for short) and Rules. On the other hand, the learned Public Prosecutor submitted that the learned Magistrate has rightly forwarded the complaint to the JJ Board since the petitioner was found to be a minor and the JJ Board has followed the procedural statutory requirements.

7. As stated already, the police, after investigation, filed

a final report referring the case as false. Annexure B is the refer report. The respondent No.1/defacto complainant, aggrieved by Annexure B filed a protest complaint. Annexure C is the protest complaint. The Judicial First Class Magistrate-I, Perumbavoor -:5:-

took cognizance on the protest complaint against the petitioner as well under Sections 323, 326 and 506(ii) read with 34 of the IPC. Later on, it was found that the petitioner was a juvenile at the time of commission of the offence and the case

against him was transferred to the JJ Board, Ernakulam for further action. The JJ Board, Ernakulam after conducting an enquiry, straight away issued summons to the petitioner.

8. Sub-section (1) Section 7 of the JJ Act, 2000 says that

When any Magistrate not empowered to exercise the powers of a Board under this Act is of the opinion that a person brought before him under any of the provisions of this Act (other than for the purpose of giving evidence), is a juvenile or the child, he shall without any delay record such opinion and forward the juvenile or the child and the record of the proceeding to the competent authority having jurisdiction over the proceeding. Sub-section (2) of Section 7 of the JJ Act,

2000 says that (2) The competent authority to which the proceeding is forwarded under sub-section (1) shall hold the inquiry as if the juvenile or the child had originally been brought before it. Section 54 of the JJ Act, 2000 says that, (1) Save as otherwise expressly provided by this Act, a :-6:- competent authority while holding any inquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and subject thereto, shall follow, as far as may be, the procedure laid down in the Code of Criminal Procedure, 1973 (2 of 1974) for trials in summons cases.

(2) Save as otherwise expressly provided by or under this Act,

the procedure to be followed in hearing appeals or revision proceedings under this Act shall be, as far as practicable, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

9. It is settled that, when a protest complaint is filed

against a refer report, the Magistrate has to peruse both the refer report as well as the protest complaint and shall take an independent decision as to whether the protest complaint has to be taken on file. In this case, after the receipt of the case records by the JJ Board, the JJ Board did not independently peruse the refer report or protest complaint and apply its mind to find out whether there are sufficient materials to proceed against the JCL. The JJ Board can very well drop

the proceedings if it finds that there are no materials for proceeding against the JCL. -:7:-

Instead, the JJ Board mechanically issued summons to the petitioner, probably for the reason that the Judicial First Class Magistrate-I, Perumbavoor had already taken cognizance of the protest complaint against the petitioner as well. Inasmuch as the petitioner was a juvenile, the entire proceedings taken by the learned Magistrate including taking cognizance on the protest complaint is not binding on him.

10. The JJ Act and the Juvenile Justice (Care and

Protection of Children) Rules, 2007 (for short, the JJ Rules) being benevolent legislation and the intent of the enactment being reformatory and ameliorative in its content and enacted with the objective of safeguarding the interest of the juveniles, has extensively stated the procedural safeguards required to be followed in the proceedings before the board in addition to the application of the Criminal Procedure Code. Rule 3 (I) talks about the principle of presumption of innocence and Rule 3(I)(d)(ii) states about the procedural protection of innocence, wherein it is stated that All procedural safeguards that are guaranteed by the Constitution and other statutes to the adults and that go in to strengthen the juvenile's or child's right to presumption of

innocence shall be guaranteed to juveniles or the children or juveniles in conflict with law. The JJ Board took cognizance against the petitioner and issued summons to him without following the procedures contemplated by the Cr.P.C and JJ Act,

2000 and JJ Rules. That apart, the learned counsel for the petitioner made available to me the judgment of the Judicial First Class Magistrate-III, Perumbavoor against the accused Nos. 1 and 3. They were already acquitted after a full-fledged trial. It is submitted that there is no appeal against the said judgment. In these circumstances, no purpose will be served in proceeding further against the petitioner.

Accordingly, all further proceedings against the petitioner in C.C.No.153/2016 on the file of the Juvenile Justice Board, Ernakulam stands hereby quashed. The Crl.M.C is allowed. Sd/- DR. KAUSER EDAPPAGATH JUDGE kp -:9:- APPENDIX OF CRL.MC 8525/2016 PETITIONER ANNEXURES ANNEXURE A TRUE COPY OF THE FIR IN CR.NO.121/12 OF KURUPAMPADI POLICE STATION ANNEXURE B TRUE COPY OF THE FINAL REPORT (REFER REPORT) IN CR.NO.121/12 OF KURUPPAMPADI POLICE STATION, FILED BEFORE HTE COURT OF THE JFCM-I, PERUMBAVOOR ANNEXURE C TRUE COPY FO THE PROTEST COMPLAINT FILED BY THE 1ST RESPONDENT BEFORE THE COURT OF THE JFCM-I, PERUMBAVOOR ANNEXURE D TRUE COPY OF THE SUMMONS ISSUED TO THE PETITIONER FROM THE JUVENILE JUSTICE BOARD, ERNAKULAM DATED 28.09.2016 ANNEXURE E TRUE COPY OF THE PROCEEDINGS IN CC JUSTICE BOARD,ERNAKULAM.

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