

Sreekanth vs State of Kerala

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Court : Kerala

Decided On : Jun-30-2023

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : Crl.MC/1179/2020

Appellant : Sreekanth

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V FRIDAY, THE 30TH DAY OF JUNE 2023 / 9TH ASHADHA, 1945 CRL.MC NO. 1179 OF 2020 CRIME NO.1251/2015 OF Kaduthuruthi Police Station, Kottayam

AGAINST THE ORDER IN C.C NO.61/2019 OF JUDICIAL MAGISTRATE OF FIRST CLASS, VAIKOM PETITIONERS/ACCUSED :-
1 SREEKANTHAGED 34 YEARS S/O.OMANAKUTTAN, MAMALASSERY HOUSE, KADUTHURUTHI P.O., 2 SUSHAMA,AGED 57 YEARS W/O.OMANAKUTTAN, MAMALASSERY HOUSE, KADUTHURUTHI P.O., 3 SREEKUTTY,AGED 21 YEARS

D/O.OMANAKUTTAN, MAMALASSERY HOUSE, KADUTHURUTHI P.O., BY ADVS. K.C.CHARLES SRI.M.POLY MATHAI SRI.E.N.HARI RESPONDENT/STATE AND COMPLAINANT : 1 STATE OF KERALA REPRESENTED BY THE SUB INSPECTOR OF POLICE, KADUTHURUTHI,

2 RADHA P.K., AGED 62 YEARS W/O.BABY, KALARIKKAL HOUSE,PULIKATHAZHAM PADAM, KADUTHURUTHI P.O., KADUTHURUTHI VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT. BY ADVS. THOMAS J.ANAKKALLUNKAL ABISHEK JOHNY MARIA PAUL THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30.06.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

The petitioners herein are the accused Nos.1 to 3 in C.C.No.61 of 2019 on the file of the Judicial Magistrate of First Class, Vaikom. The aforesaid case was taken on file on the basis of the protest complaint filed by the second respondent alleging offences punishable under Sections 354, 323, 447 and 506(i) of the IPC and the relevant provisions of 83 of the SC/ST Prevention of Atrocities Act, 1989.

2. Short facts are as under :

A crime was registered as Crime No.1521 of 2015 based on the information furnished by the 1st petitioner before the Kadathuruthi Police as Crime No.1254 of 2015. The investigation was conducted by the police, and a refer report was submitted before the learned Magistrate on 12.01.2016, concluding that the allegations leveled against the accused are false. As an objection to the refer report, Annexure-A protest complaint dated 31.05.2017 was preferred. The learned Magistrate as per Annexure-B, proceedings sheet, took the complaint filed on 11.01.2018 and passed the following order on 10.01.2019.

Heard. SC/ST Act does not have a retrospective effect. The remaining offences under Section 354, 323, 447 and 506(i) are made out. Offence under Section 427

of the IPC not made out against the accused. Case is taken on file as C.C.No.61/2019. Summons to the accused. Call on 30.03.2019. (sic)

3. The learned counsel appearing for the petitioners submitted

that the procedure followed by the Magistrate is erroneous. According to the learned counsel, the records do not reveal that the Magistrate had considered all the relevant materials and had applied his mind. The learned counsel further submitted that a second complaint would lie only if there were any manifest error or manifest miscarriage of justice in the previous

order or if the complainant relied on new facts and materials which were not

to his knowledge or with any reasonable diligence could not have been brought forward in the previous proceedings. The learned counsel pointed out that, as is evident from Annexure-B proceeding sheet, the order is silent as to whether the decision to take cognizance and issue summons to the accused was taken on the materials available in the final report laid under Section 173(2) of the Code of Criminal Procedure, or on all other materials made available by the complainant in the enquiry under Section 200 of the Code of Criminal Procedure. To substantiate her contention, the learned counsel relies on the law laid down by this Court in Parameswaran Nair v. Surendran and another (2009 (1) KLT 794) Satheesh Kumar v. State of Kerala [2021 KHC 3374] and Cibi K Cherian v. State of Kerala and Another [2022 KHC 2865].

4. I have heard the learned counsel appearing for the respondent, who submitted that the petitioner had not made out any case for interference.

5. I have considered the submissions advanced.

6. I have already extracted the order passed by the learned

Magistrate on 10.01.2019. An identical issue had come up for consideration by this Court in Parameswaran Nair (supra). In paragraphs 18 and 19 the procedure to be followed by a Magistrate when after submission of the referring report by the

police, a protest complaint is filed has been detailed.

18. When the Magistrate issue notice to the complainant on

receipt of the final report and grants the opportunity to the complainant to show why cognizance of the offence is to be taken and the complainant files a protest complaint, it is to be treated only as his objections to the final report, stating his reasons why the report cannot be accepted. If the Magistrate records his statement and that of the witnesses and decides to take cognizance of the offence, after considering all the materials including the final report made by the police under sub-Section 2 of Section 173, it is advisable for the Magistrate to record that the final report is not accepted and on the entire materials he is of the opinion that there is ground to proceed and issue summons under Section 204 of Code of Criminal Procedure. But the fact that no specific order was recorded that final report is not accepted or fact that the decision to take cognizance of the offence and issue process was recorded in the protest complaint, by themselves are not fatal, if the records show that Magistrate has considered all CRRP 1634/08 the relevant materials and applied his mind. If after complying these procedures, an order not to take cognizance is passed by the Magistrate,

then a second complaint will lie, only if there was any manifest error or manifest miscarriage of justice in the previous order or the complainant relies on new facts or materials which was not to his knowledge or with reasonable diligence could not have brought forward in the previous proceedings.

19. The order passed by the learned Magistrate is to be

considered in the light of the aforesaid principles. The order is blank on whether the decision to take cognizance and issue summons was taken on the materials available in the final report made under Section 173(2) or on the materials made available by the complainant in the inquiry under Section 200. The order makes it clear that the learned Magistrate

has not considered the question on the proper perspective. In such circumstances, the order can only be set aside and the matter remanded for fresh consideration in accordance with law.

7. In the case at hand, the learned Magistrate has not chosen to

record that the final report is not accepted. The records also do not show that the Magistrate has considered the relevant materials and applied his mind. Furthermore, as held by this Court, a second complaint will lie only if there was any manifest error or manifest miscarriage of justice in the previous order, or if the complainant relies on new facts or materials which were not to his knowledge or with reasonable diligence could not have brought forward in the previous proceedings. In that view of the matter, I am of the view that interference is warranted. This petition will stand allowed. The order dated 10.01.2019 taking cognizance of the offence against the accused in C.C.No.61 of 2019 is set aside. The learned Magistrate is directed to reconsider the final report made under Section 173(2) of the Code of Criminal Procedure in terms of the directions in Parameshwaran (supra). Sd/- RAJA VIJAYARAGHAVAN V, JUDGE SMA
APPENDIX OF CRL.MC 1179/2020 PETITIONER ANNEXURES :- ANNEXURE A TRUE COPY OF THE PROTEST COMPLAINT DATED 31.05.2017 FILED BY THE 2ND RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, VAIKOM. ANNEXURE B TRUE COPY OF THE PROCEEDINGS IN ANNEXURE A

COMPLAINT CONVERTING THE SAME INTO CC 61/2019 OF THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT, VAIKOM DATED 10.01.2019. ANNEXURE C TRUE COPY OF THE SUMMONS ISSUED TO THE PETITIONERS DATED 30.3.2019 IN CC NO.61/2019 BY THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT, VAIKOM.

ANNEXURE D TRUE COPY OF THE CHARGE SHEET AGAINST THE 2ND RESPONDENT AND 8 OTHERS IN C.C.661/2016. ANNEXURE E TRUE COPY OF THE F.I. STATEMENT DATED 15.9.2019 GIVEN BY THE 2ND RESPONDENT BEFORE THE KADUTHURUTHY POLICE. ANNEXURE F TRUE COPY OF THE FINAL REPORT FILED BY THE POLICE IN CRIME NO.1254

DATED 12.01.2016 BEFORE THE JUDICIAL 1ST CLASS MAGISTRATE'S COURT, VAIKOM.

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