SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

A.V.John, vs Ashraf @ Raveendran,

A.V.John, vs Ashraf @ Raveendran,

SooperKanoon Citation : sooperkanoon.com/1365663

Court : Kerala

Decided On : Dec-18-2023

Judge : Honourable Mrs. Justice Mary Joseph

Appeal No. : CRL.A/496/2021

Appellant : A.V.John,

Respondent : Ashraf @ Raveendran,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH MONDAY, THE 18TH DAY OF DECEMBER 2023 / 27TH AGRAHAYANA, 1945 CRL.A NO. 496 OF 2021 CRIME NO.750/2014 OF Cheruvannur Police Station, Kozhikode ARISING OUT OF THE ORDER DATED 10.03.2020 IN CMP NO.63/2019 IN SC NO.500 OF 2015 OF ADDITIONAL SESSIONS COURT KOZHIKODE- II, KOZHIKODE IN SC NO.203 OF 2021 OF ASSISTANT SESSIONS COURT-III KOZHIKODE. APPELLANTS/ACCUSED:

1 A.V.JOHN, AGED 48 YEARS S/O. VARGHESE, ALAKKAL HOUSE, VELIMANAM P.O, KANNUR DIST, NOW WORKING AS A.C.P. OF

POLICE, KANNUR-670 704 2 SIJU B.K, S/O. BALAKRISHNAN, AGED 41 YEARS, ANANDABHAVAN HOUSE, CHEMMARATHOOR P.O, KOZHIKODE DIST., 673104, (NOW WORKING AS INSPECTOR OF POLICE, KUNNAMANGALAM). 3 BABU P.G, S/O. SREEDHARAN NAIR, AGED 53 YEARS, SREENILAYAM HOUSE, ERVANOOR P.O, KOZHIKODE DIST-673 585, (NOW WORKING AS S.I OF POLICE, KUNNAMANGALAM). 4 MOHAMMED SHAFI, S/O. ABDUL RAHMAN, MUSLIYAR, AGED 47 YEARS, MADATHIL HOUSE, KARASSERY P.O, KOZHIKODE DIST., 673 602, (NOW WORKING AS ASST. SUB INSPECTOR CONTROL ROOM, KOZHIKODE). 5 RANDHEER T.G, S/O. GOVINDANKUTTY, AGED 45 YEARS, R.P. NIVAS, UNNIKULAM P.O, KOZHIKODE DIST. 673 574, (NOW WORKING AS ASST. SUB INSPECTOR, TOWN POLICE KOZHIKODE, TRAFFIC POLICE STATION, KOZHIKODE). 6 AJITH KUMAR T.A, RAGHAVAN, AGED 57 YEARS, S/O. ANNURTHAZHAM HOUSE, MAKKADA P.O, KOZHIKODE DIST. 673 611 BY ADVS. P.P.HASHICK M.P.SHAMEEM AHAMED CYRIAC TOM

RESPONDENTS/COMPLAINANT/COMPLAINANT:

1 ASHRAF @ RAVEENDRAN, S/O. NARAYANAN VAIDHYAR, KOMATH-H, CHALIKKARA, CHENOLI P.O, PERAMBRA-673525.(PARTY-IN -PERSON INCORPORATED AS PER ORDER DATED 24.02.2023 IN CRL.M.A.1/2023 IN CRL.A.496/2021) 2 THE 2ND ADDL. DISTRICT AND SESSIONS COURT, KOZHIKODE, (REPRESENTED BY SHIRASTADAR, DISTRICT COURT, KOZHIKODE-673 001 3 THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031 BY ADV ASHRAF @ RAVEENDRAN,(Party-In-Person) SMT SEENA C (GOVERNMENT PLEADER)

THIS CRIMINAL APPEAL HAVING COME UP FOR HEARING ON 15.06.2023, THE COURT ON 18.12.2023 DELIVERED THE

FOLLOWING: -:2:-

MARY JOSEPH, J.

---------- ---------- Dated this the 18th day of December, 2023.

JUDGMENT

The appeal on hand is originated from an order passed by II Additional Court of Sessions, Kozhikode (for short, the trial court') in CMP No.63/2019 in S.C No.500/2015 and unnumbered CMP of 2020 dated 04.11.2020 filed by II Additional District and Sessions Court, Kozhikode before JFCM I, Kozhikode, currently pending as S.C No.203/2021 on the files of III Additional Assistant Sessions Court, Kozhikode.

2. Appellants are accused in the above cases and respondents

are the complainant. A complaint was filed as above before the trial court and an order was passed on 10.03.2020 allowing the application. It was directed in the order that the complaint should be filed under Section 340 of the Code of Criminal Procedure, 1973 (For short, the Cr.P.C) against R2 to 8 for offences under Sections 120B, 167, 211, 193, -:3:- 195, 196, 200 and 219 of the Indian Penal Code 1860, (for short, the IPC) and Section 116 of the Kerala Police Act, 2011 (for short, the K.P Act) . The Chief Ministerial Officer of the trial court was authorised by that order to file a complaint before the Magistrate Court concerned. Aggrieved by the order, the accused have approached this Court in the appeal on hand. The appellants are aggrieved by the direction issued to the Sheristadar (Ministerial Officer) of the trial court to file a complaint invoking the jurisdiction under Section 340 Cr.P.C against them before the Magistrate, Kozhikode for commission of the offences under Sections 167, 193, 195, 196, 199, 213, 219 and 120B IPC and under Section 116 of K.P Act. On the basis of the order, the trial court, filed a private complaint through the Sheristadar before JFCM-I, Kozhikode and that is now pending before III Additional Assistant Sessions Court, Kozhikode after committal as S.C.No.203/2021. As per the allegations, while discharging their

official duties on 11.07.2014 at 1.30 a.m, the 1 st respondent, who is a known offender involved alongwith others in various serious crimes, armed with deadly weapons, committed dacoity. Respondent No.1 and other accused were taken into custody and crime No.750/2014 was registered at Chevayur Police Station. A case was registered as SC No.500/2015 on the files of the trial court. -:4:- The case was tried by the above court and the trial culminated in acquittal of the 1st respondent and the other accused. The 1 st respondent during trial relied on the vehicle movement register kept at Chevayur Police Station. The said document was produced by him to show that the vehicle in which appellant No.1 was conducting patrol duty was halted at Chevayur Police Station and therefore, the prosecution story cannot be believed at all. Respondent No.1 also relied on the statement of a third party in defence evidence. The third party, whose statement was relied on was a prosecution witness in another case, who deposed that respondent No.1 was found by him at Chevayur Police Station on 08.07.2014. Thus giving the benefit of doubt to the 1 st respondent and the other accused, they were acquitted vide Annexure A2 judgment.

3. When the trial in S.C No.500/2015 was progressing, a

complaint was filed by the respondent No.1 before JFCM I Kozhikode alleging that he was falsely implicated by the appellants in Crime No.750/2014. Thus prosecution was sought against appellants for

offences under Section 343, 346, 348, 211 and 465 IPC. Vide order

passed as Annexure-A4, JFCM I took cognizance only for the offences under Sections 343 and 365 IPC. The prayer for taking cognizance -:5:- under Sections 211, 465 and other offences in Annexure-A3 complaint was declined by JFCM, Kozhikode.

4. The trial held in SC No.500/2015 culminated in acquittal of

the accused. The 1st respondent then preferred another private complaint before the trial court as CMP No.63/2019 seeking to invoke the power under Section 340 Cr.P.C to lodge a complaint against the appellants also for the very same offences

as in Annexure A3 complaint.

5. Appellants contested the complaints before the III

Additional District and Sessions Court on the ground that the power under Section 340 Cr.P.C can be invoked only when the alleged offences are made out with reference to some documents after production of those in evidence before the court. It was contended that the power under Section 340 Cr.P.C is limited only to offences mentioned under Section 195 Cr.P.C. It was pointed out that the offences alleged against the appellants are inclusive of even offences under Sections 167 and 219 IPC and 116 KP Act which will not come within the purview of Section 195 Cr.P.C.

6. It was contended furthermore that appellants 2, 4, 5 and 6

neither tendered any evidence nor fabricated any documents in SC No.500/2015 and therefore, cognizance was not warranted to be taken. -:6:- It was urged that sanction was not obtained under Section 197 Cr.P.C before instituting the proceedings by the complainant. Legal positions settled by the Apex Court in Iqbal Singh Marva v. Meenakshi Marva (AIR 2005 SC 2119) that the alleged acts attracting forgery were not committed after filing of the documents before the court and therefore such cases do not come within the purview of Section 195 (1) (b)(ii) Cr.P.C. Instead of arriving at such a finding, the learned II Additional Sessions Judge took a contrary stand that it would be attracted in the offences alleged against the appellants and directed the Ministerial Officer of the court to file a complaint against them before the Magistrate Court under Sections 167, 120 B, 211, 193, 195, 196, 200 and 219 of IPC and Section 116 of K P Act, copy of which order is produced alongwith as Annexure-A6. As per the directions in Annexure-A6, the II Additional District and Sessions Judge filed Annexure-A7 complaint before Judicial First Class Magistrate Court-I, Kozhikode against the appellants through the Sheristadar. The learned Judicial First Class Magistrate Court-I did not number the private complaint, instead, straight away initiated proceedings to commit the case to Court of Sessions vide its order, marked in evidence as Annexure-A8. Annexure-A7 complaint is registered on the files of -:7:- III Additional Assistant Sessions Judge, Kozhikode as SC No.203/2021 and process was issued

against the appellants.

7. It is found from the impugned order that the Chief Ministerial

officer of the trial court was directed to file a complaint under Section 340 Cr.P.C against appellants for offences under Sections 120B, 167, 211, 193, 195, 196, 200 and 219 of IPC and 116 KP Act. The main contention of the learned counsel for the appellant was that proceedings under Section 340 Cr.P.C can only be initiated for offences mentioned under Section 195 Cr.P.C. According to him, the trial court failed to appreciate that the exercise of power under Section 340 Cr.P.C is limited to offences mentioned in Section 195 Cr.P.C while taking cognizance on the complaint filed by the Sheristadar. In this connection an understanding of Section 340 as well as Section 195 Cr.P.C is relevant and are extracted hereunder:

> 340. Procedure in cases mentioned in section 195. 1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub- section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,- -:8:-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the

accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub- section (1) in

respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the court as the Court may authorise in writing in this behalf.

(4) In this section," Court" has the same meaning as in

section 195. 195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance- -:9:-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the

following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable

under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to

commit, or the abetment of, any offence specified in sub- clause (i) or sub- clause (ii), except on the complaint in writing of that Court, or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the

withdrawal of the complaint and send a copy of such order

to the Court; and upon its receipt by the Court, no further -:10:- proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub- section (1), the term" Court"

means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub- section (1), a

Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court in situate: Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue

Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.(emphasis supplied)

8. It is clear from a reading of Section 340 Cr.P.C that it does

not apply when an allegation is not incorporated that forgery of a document was committed after its production before the court. -:11:- Therefore mere production of a document, which has not been proved as a forged one cannot form basis for initiating prosecution under Section 340 Cr.P.C. In order to initiate an action under Section 340 Cr.P.C, the Court has to form an opinion that it is expedient in the interest of justice to conduct an enquiry into any offences referred to in Clause (b) of Sub Section (i) of Section 195 Cr.P.C which appears to have been committed in or in relation to a proceedings in that court. Therefore, it is clear from Section 340 Cr.P.C. that prosecution can only be initiated in respect of offences mentioned under Section 195 (1) Cr.P.C. The wordings of Clause (a) of Section 195 Cr.P.C specifically provides that a court is competent to take cognizance of offences only under Sections 172 to 188 of IPC, abetment or attempt to commit such offences or criminal conspiracy to commit such offences and that too on a complaint preferred by the public servant concerned, in writing or by some other public servant to whom he is administratively subordinate.

9. Clause (b) of Section 195 Cr.P.C provides that a court shall

not take cognizance of an offence punishable under Sections 193 to 196 (both inclusive), Sections 199, 200, 205 to 211 (both inclusive) and Section 228, when such an offence was alleged to have been committed in or in relation to any proceedings in any court or any offence described in -:12:- Sections 463, 471, 475 or 476 of the IPC, when such an offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court, or of any criminal conspiracy to commit or attempt to commit or abetment of any offence specified hereinabove, except on a complaint in writing of that Court, or by such officer of the court as that court may authorise in writing in this behalf or of some other court to which that court is subordinate.

10. Sub Section (2) provides that where a complaint has been

made by a public servant under Clause (a) of sub-section (1), any authority to which he is administratively subordin ate may order the withdrawal of the complaint and send a copy of such order to the Court, and upon its receipt by the Court, further proceedings shall not be taken on the complaint.

11. The impugned order has to be dealt with in the backdrop of

the legal position involved in the above provision. Complaint was directed to be filed against appellants for offences described above, most of which are not coming within the purview of S ection 195 Cr.P.C, to initiate a prosecution under Section 340 Cr.P.C. Offences under Section 120B, 193, 195, 196, 200 and 211 IPC alone would come within the purview of Section 195 Cr.P.C. The other offences will not come -:13:- within the purview of Section 195 Cr.P.C and therefore, prosecution under Section 340 cannot be initiated on the basis of those offences. Therefore, the order assailed in the appeal suffers for the reason that the power under Section 340 was also invoked by the court for offences which would not come within the purview of Section 195 Cr.P.C. Therefore, the invocation of power under Section 340 Cr.P.C by the impugned order to initiate a prosecution for offences under Sections

167, 219 IPC and 116 K.P Act will not sustain and the impugned order

to that extent is liable to be reversed. In the result, Crl. Appeal is allowed in part. The order to the extent jurisdiction under Section 340 Cr.P.C is invoked to file a complaint alleging commission of offences under Sections 167, 219 IPC and 116 K.P Act is reversed. The impugned order to the extent it directed Chief Ministerial Officer to file complaint against appellants for offences under Sections 120B, 193, 195, 196, 200 and 211 IPC is maintained. Sd/- MARY JOSEPH, JUDGE JJ -:14:- APPENDIX OF CRL.A 496/2021 PETITIONERS ANNEXURES ANNEXURE A1 COPY OF FIR IN CRIME NO. 750/2014. ANNEXURE A2 COPY OF THE JUDGMENT DATED 18.11.2017 IN SC 500/2015. ANNEXURE A3 COPY OF THE COMPLAINT IN CMP 5149/14 BEFORE JFCM COURT, KOZHIKKODE. ANNEXURE A4 COPY OF THE ORDER DATED 7.09.2017 PASSED BY THE JFCM 1, IN CC 800/2017 (CMP WAS TAKEN BY JFCM, KOZHIKODE. ANNEXURE A5 COPY OF THE CMP NO. 63/2019 FILED BY RESPONDENT NO.1 BEFORE SESSIONS COURT. ANNEXURE A6 COPY OF THE ORDER DATED 10.03.2020 IN CMP 2ND ADDL. SESSIONS JUDGE. ANNEXURE A7 COPY OF THE COMPLAINT FILED BY SHIRASTADAR, DISTRICT AND SESSIONS COURT, KOZHIKKODE AGAINST THE APPELLANTS. ANNEXURE A8 CERTIFIED COPY OF THE ORDER DATED 18.01.2021 IN CP NO. 40/2020 PASSED BY THE JFCM1, KOZHIKKODE. ANNEXURE A9 COPY OF THE SUMMONS ISSUED BY THE 3RD ADDL. ASST. SESSIONS JUDGE, KOZHIKODE IN SC 203/2021 ANNEXURE A10 DETAILS OF SOME OF THE CASES BOOKED AGAINST THE RESPONDENT NO.1 PRIOR TO THE CRIME IN 750/2014 OF CHEVAYUR POLICE STATION. //TRUE COPY// Sd/- PA to JUDGE

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com