

Smitha vs the State of Kerala

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Court : Kerala

Decided On : Jan-27-2022

Judge : Honourable Mr. Justice K.Haripal

Appeal No. : WP(Crl.)/89/2022

Appellant : Smitha

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE K.HARIPAL THURSDAY,
THE 27TH DAY OF JANUARY 2022 / 7TH MAGHA, 1943 WP(CRL.)
NO. 89 OF 2022 PETITIONER: SMITHA,W/O.THANKACHAN, AGED
40, VETHATTUKALAM HOUSE,ST.ANTONY'S CHURCH ROAD,
ARoor VILLAGE,CHANDIROOR.PO.,CHERTHALA TALUK,
ALAPPUZHA DISTRICT PIN 688 537 BY ADVS. V.N.SANKARJEE
V.N.MADHUSUDANAN R.UDAYA JYOTHI M.M.VINOD M.SUSEELA
KEERTHI B. CHANDRAN P.K.VIJAYAN PILLAI C.PURUSHOTHAMAN
NAIR RESPONDENTS:

1. THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682 031.

2. THE STATION HOUSE OFFICER, ELAMAKKARA POLICE STATION, ELAMAKKARA, KOCHI-682 026.

3. SINDHU JOB, S/O.JOB, AGED 47, PULIPARAMBIL

HOUSE, AROOR VILLAGE CHANDIROOR.PO., CHERTHALA TALUK, ALAPPUZHA DISTRICT, PIN 688 537 OTHER PRESENT: SR.PP - SRI. HRITHWIK C.S. THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 27.01.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: J U D G M E N T 'C.R' Aggrieved by an order of the Judicial Magistrate of First Class-II, Aluva in returning the complaint instituted under Section 190 of the Cr.P.C., the petitioner has moved this Court under Article 226 of the Constitution of India seeking the following reliefs:-

"a) Declare that the petitioner being wife of the aggrieved person or injured person or victim of a crime is competent to lodge complaint before the Judicial First Class Magistrate under Section 190(1)(a) of the Code of Criminal Procedure, 1973; b) Declare that the Judicial First Class Magistrate Court exercising jurisdiction under Sections 190, 200, 202, 204 of the Code of Criminal Procedure shall not delegate his power to his ministerial staff as has been done in Ext.P4 complaint. c) Issue a writ of mandamus or any other appropriate writ,

order or direction directing the Judicial First Class

Magistrate Court, Aluva-II to accept Ext.P4 complaint and proceed with it in accordance with law at the earliest with a definite time frame; "

2. Petitioner is the wife of the injured in a road traffic

accident. It is alleged that on 16.10.2021, petitioner's husband- Thankachan, a carpenter by avocation, sustained injuries while proceeding to the place of work travelling on the pillion seat of the motor cycle bearing Registration No.KL-32/Q-

0114 ridden by the accused, through Elamakkara-Puthukkalavattom Road; in front of Skyline Apartments, due to the rash and negligent riding as to endanger human life, since he had abruptly twisted, the vehicle capsized and her husband fell down and sustained grievous injuries. He was immediately rushed to the MAJ Hospital, Edappally. Ext.P1 indicates that Thankachan was taken there at 9.20 am on 16.10.2021 with the alleged history of road traffic accident. Ext.P2 discharge summary indicates that on the same day, he was taken to the Department of Orthopaedics and Rehabilitation, Lisie hospital where he was admitted with the history of pain and swelling on left ankle following alleged history of road traffic accident. Diagnosis was fracture trimalleolar left ankle for which he underwent surgery on 19.10.2021 and was discharged on 21.10.2021. The grievance of the petitioner is that despite Ext.P1 intimation given by the CMO, MAJ Hospital to the Sub Inspector, Elamakkara Police Station, crime was not registered. It is alleged that on 11.11.2021, petitioner lodged a complaint before the City Police Commissioner, Ernakulam which also was not acted upon and thus, on 19.1.2022, she approached the Judicial First Class Magistrate-II, Aluva. It is specifically averred that after sustaining grievous injuries, her husband is in immobile stage and is under complete rest and thus, she approached the court alleging offences under Sections 279, 337 and 338 IPC. But astonishingly enough, the complaint was returned stating that 'the petition was filed by the wife of the complainant'. The most disturbing aspect is that a note seen put on the last page of the complaint, as follows:- 19/01/22

Verified within the jurisdiction. Receipt of complaint at Commissioner Office is not seen produced. Hence for orders. Id/- Petition filed by wife of the complainant. Hence may be returned, for orders. Id/- Returned sd/- It is clear that the signed order was passed by the Magistrate. It is pointed out that the Magistrate has returned the complaint on the premise that it was filed by the wife of the complainant which is illegal.

3. I have heard learned counsel for the petitioner as well as the learned Senior Public Prosecutor.

4. I have no doubt that the order passed by the Magistrate

is illegal and unsustainable. It is the settled proposition of law that criminal law can be set in motion by any person. Here, on the ground that after sustaining grievous hurt, her husband is unable to move out and hence, she has taken initiative to prefer the complaint. The principle of locus standi is alien to criminal jurisprudence. In this connection, it is appropriate to extract the following principles from the oft quoted decision in *A. R. Antulay vs Ramdas Srinivas Nayak And Another* [AIR 1984 SC 718].

6. It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Criminal P.C. envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision. Numerous statutory provisions, can be referred to in support of this legal position such as (i) Sec. 187-A of Sea Customs Act, 1878 (ii) Section 97 of the Gold Control Act, 1968 (iii) Section 6 of Import and Export Control Act, 1947 (iv) Section 271 and Section 279 of the Income tax Act, 1961 (v) Section 61 of the Foreign Exchange Regulation Act, 1973 (vi) Section 621 of the Companies Act, 1956 and (vii) Section 77 of the Electricity Supply Act. This list is only illustrative and not exhaustive. While S.190

of the Criminal P.C. permits anyone to approach the Magistrate with complaint, it does not prescribe any qualification the complainant is required to fulfil to be eligible to file a complaint. But where an eligibility criterion for a complainant is contemplated specific provisions have been made such as to be found in Sections 195 to 199 of the Cr. P. C. These specific provisions clearly indicate that in the absence of any such

statutory provision, a locus standi of a complainant is a concept foreign to criminal jurisprudence. In other words the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force (See S.2(n) Cr. P. C.) is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendatta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a straight jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception."

Here no statutory exemption is available. In other words, the act of the Magistrate returning the complaint is illegal and unsustainable and liable to be quashed.

5. More disturbing is the Court acting upon office notes

put up by the ministerial staff. This Court takes strong exception to such a conduct. In judicial matters, the staff members cannot make any note or suggestion. The learned Magistrate has not applied his mind before returning the complaint. The reason stated is illegal. The order is quashed and the Magistrate is directed to entertain the complaint and pass orders, in accordance with law, within a period of seven days from today. The Writ Petition (CrI) is allowed. sd/- K.HARIPAL, Judge
MBS/ APPENDIX RESPONDENTS' EXHIBITS:

Ext.P1: True copy of the intimation dated 16.10.2021 issued by the MAJ Hospital to the 2nd respondent. Ext.P2: True copy of the discharge summary dated 2.10.2021 issued by the Lisie Hospital. Ext.P3: True copy of the complaint submitted by the petitioner on 11.11.2021. Ext.P4: True copy of the complaint dated 19.1.2022 filed before the Judicial First Class Magistrate Court-II, Aluva.

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