

Prasanth vs the State of Kerala

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Court : Kerala

Decided On : Feb-25-2020

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : CrI.MC/4870/2013

Appellant : Prasanth

Respondent : The State of Kerala

Judgement :

CrI.M.C.No.4870 of 2013 1 0IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN WEDNESDAY, THE 25TH DAY OF FEBRUARY 2020 / 6TH PHALGUNA, 1941 CrI.MC.No.4870 OF 2013 AGAINST THE ORDER IN CC 882/2012 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II, THIRUVANANTHAPURAM PETITIONER: PRASANTH, AGED 21 YEARS S/O.S.SANTHAKUMAR, RESIDING AT T.C.4/935, KURISHU VILAKATHU VEEDU, SREE CHITHIRA NAGAR, KOWDIAR.P.O, THIRUVANANTHAPURAM. BY ADVS. SRI.SASTHAMANGALAM S. AJITHKUMAR SRI.V.S.THOSHIN RESPONDENTS:

1 THE STATE OF KERALA, REPRESENTED BY THROUGH SUB
INSPECTOR OF POLICE,FORT POLICE
STATION,THIRUVANANTHAPURAM,THE PUBLIC
PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM. 2 THE
REGIONAL TRANSPORT OFFICER OFFICE OF THE REGIONAL
TRANSPORT
COMMISSIONER,VAZHUTHACAUD,THIRUVANANTHAPURAM,PIN-
695008. 3 SYAMALA D/O.SUMATHY,RESIDING AT BSNL D1
QUARTER,CHALA WARD,MANACAUD
VILLAGE,THIRUVANANTHAPURAM,PIN- 695006. 4 THE MANAGER
SPEED POST CENTRE,THIRUVANANTHAPURAM-695001. R3 BY
ADV. SMT.M.P.MARY THIS CRIMINAL MISC. CASE HAVING BEEN
FINALLY HEARD ON 19-02-2020, THE COURT ON 25-02-2020
PASSED THE FOLLOWING: CR

P.V.KUNHIKRISHNAN, J.

----- Crl.M.C.No.4870 of
2013 ----- Dated this the
25th day of February, 2020

ORDER

The above Criminal Miscellaneous Case is filed to quash the entire proceedings in C.C.No.882 of 2012 on the file of the Judicial Magistrate of the First Class-II, Thiruvananthapuram. The above case is charge sheeted by the Sub Inspector of Police, Fort Police Station, Thiruvananthapuram against the petitioner alleging offence punishable under Section 52 of Indian Post Office Act.

2. The petitioner is working as GDSMD of the SPC,

Thiruvananthapuram. The prosecution case is that the petitioner did not deliver the vehicle registration certificate in respect of the vehicle No.KL-01-AV-5189, which was sent via registered speed post from RT Office, vide EL 104800998. It is alleged that, though the correct address of the addressee was mentioned as

"Smt.Syamala, S.D-1, BSNL Staff Quarters, Admn Building Compound, Manacaud PO, the petitioner has served the aforesaid speed post to another person and not to the said Syamala. Hence, it is alleged that the petitioner committed the offence under Section 52 of the Indian Post Office Act, 1898.

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3. Heard the learned counsel for the petitioner and the Public Prosecutor.

4. When this Crl.M.C was filed, this court stayed the

proceedings of the lower court as per Order dated 18.8.2014. Subsequently, when the matter came up on 3.9.2014, the Public Prosecutor submitted that investigating officer intends to file a request before the Magistrate concerned for permitting to conduct further investigation under Section 173(8) of the Criminal Procedure Code. Therefore, this court clarified that the order of stay of all further proceedings in CC No.882 of 2012 will not be a fetter for further investigation. Thereafter, when the case came up for consideration before this court today, no submission was made by the prosecutor regarding the further investigation conducted by the police. Therefore, I decided to hear the case in detail.

5. Heard counsel for the petitioner and the Public Prosecutor.

6. The short point to be decided in this case is, even if the

entire allegations in Annexure-A final report is accepted in toto, whether an offence under Section 52 of the Indian Post Office Act is attracted. For clarity, Section 52 of the Indian Post Office Act, 1898 is extracted here under:

52. Penalty for theft, dishonest misappropriation, secretion, destruction, or throwing away of postal articles, -Whoever, Crl.M.C.No.4870 of 2013 4

being an officer of the Post Office, commits theft in respect of, or dishonestly misappropriates, or, for any purpose whatsoever, secretes, destroys or throws away, any postal article in course of transmission by post or anything contained therein, shall be punishable with

imprisonment for a term which may extend to seven years, and shall also be punishable with fine.

7. To attract the offence under Section 52 of the Indian Post

Office Act, an officer of the post office should commit theft in respect of, or dishonestly misappropriates, or, any purpose whatsoever secretes, destroys or throws away, any postal article in course of transmission by post or anything contained therein. The allegation in this case is that when the petitioner was working as GDSMD at Thiruvananthapuram Speed Post Centre of the Postal Department, the speed post article addressed to the charge witness No.2 was not handed over to her and it was served to some others. Hence it is alleged that, the petitioner committed the offence.

8. Even if the entire allegations in Annexure-A final report is

accepted, no offence under Section 52 of the Indian Post Office Act is attracted. The heading of the Section says that 'penalty for theft, dishonest misappropriation, secretion, destruction or throwing away of postal articles'. If a postal article is handed over not to the addressee, Section 52 of the Indian Post Office Act is not attracted.

Crl.M.C.No.4870 of 2013 5 To attract Section 52 of the Act, theft, dishonest misappropriation, secretion, destruction, or throwing away of postal article is necessary. In this case, there is no question of theft. If a postal article is entrusted to an officer of the Post Office and article entrusted is not found to have been disposed of in the manner permissible under the Act, the offence committed would not amount to theft. Similarly, the prosecution has no case that the article entrusted to the petitioner is misappropriated by him dishonestly. It is also to be noted that there is no secretion, destruction or throwing away of postal articles by the petitioner. The object of the provision is to prevent postal articles being tampered with in the course of transmission.

9. In this case, the allegation of the prosecution is that a wrong person received the speed post article. A perusal of

Annexure-B letter of the Manager, Speed Post Centre, Thiruvananthapuram, it is clear that the RC Book was returned back. Relevant portion of Annexure-B is extracted here under:

Assistant Post Master (Mails), General Post Office, Trivandrum vide error book entry dated 09/02/2013, reported that this RC Book was received at the mails branch of GPO, TVM on 9.2.2013, along with the articles collected from the street letter box on the same day. It is presumed that the wrong recipient might have dropped the RC Book in the Street Letter Box.

Crl.M.C.No.4870 of 2013 6 The RC Book is submitted to your office for kind necessary action. Receipt of the same may kindly be acknowledged.

10. The Hon'ble Supreme Court in Radhakrishnan v State of Uttar Pradesh (AIR 1963 SC 822) held as follows:

"The mere fact that there is even a delay of several months in delivering a postal article to the addressee would not mean that the article has seized to be in the course of transmission. It is common experience that delivery of postal article is now and again delayed for a considerable length of time - may be through accident or through the negligence of the postal employees. It is probably for this reason that the definition in Section 3(a) clearly lays down that until an article despatched by post, is delivered or can be said to be delivered that it will be deemed to be in course of transmission.

11. In this case, during the course of transmission of the postal article, there was delay due to negligence of the postal employees, that will not attract Section 52 of the Indian Post Office Act.

12. Hence even if the entire allegations in Annexure-A final

report is accepted, no offence under Section 52 of the Indian Post Office Act is made out. Therefore, Annexure-A final report against the petitioner is

unsustainable. But of course, I make it clear that if the authorities found that, any offence or any misconduct is committed by the petitioner, they can proceed against the petitioner

Crl.M.C.No.4870 of 2013 7 in accordance with law. Hence, this Crl.M.C is allowed. All further proceedings in CC No.882 of 2012 on the file of Judicial Magistrate of the First Class- II, Thiruvananthapuram are quashed. P.V.KUNHIKRISHNAN, JUDGE cms Crl.M.C.No.4870 of 2013 8

APPENDIX PETITIONER'S EXHIBITS: ANNEXURE P1 ANNEXURE-A CERTIFIED COPY OF THE FINAL REPORT IN C.C.882/12 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, THIRUVANANTHAPURAM REGISTERED FOR OFFENCES PUNISHABLE UNDER SEC.52 OF THE INDIAN POST OFFICE AT 1898. ANNEXURE P2 ANNEXURE-B THE TRUE COPY OF THE LETTER ISSUED BY THE MANAGER, SPEED POST CENTRE DATED 15/02/2013. RESPONDENTS EXTS NIL cms /TRUE COPY/ P.S.TO JUDGE

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