

Sh. Binoy Jacob Vs. the State

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SooperKanoon Citation : sooperkanoon.com/700406

Court : Delhi

Decided On : Aug-31-2001

Reported in : 93(2001)DLT666; 2001(60)DRJ371

Judge : Mr. K.S. Gupta, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 190, 200, 204, 156(3) and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 120-B and 420

Appeal No. : CrI. M:(M) 2026/2001

Appellant : Sh. Binoy Jacob

Respondent : The State

Advocate for Pet/Ap. : Ms. Asha Tiwari, Adv

Disposition : Petition allowed

Judgement :

ORDER

K.S. Gupta. J.

1. This petition under section 482 Cr.P.C. seeks setting aside of the order dated 18th May 2001 passed by a Metropolitan Magistrate in Criminal Complaint No. 211 / 1, titled Binoy Jacob vs. P.G. Verghese and others.

2. Short submission advanced by Ms. Asha Tiwari for petitioner was that after taking cognizance of complaint filed under section 420 read with section 120-B IPC by the petitioner it was not legally open to the Metropolitan Magistrate to have directed the investigation to be made under section 156(3) Cr.P.C. by the SHO. In support of submission, reliance was placed on the decision in Tula Ram and others vs . Kishore Singh, : 1978 CriLJ8 . Copy of the order sheet of complaint case at Page 10, would reveal that on filling of complaint after taking cognizance the case was fixed for recording complainant's evidence on 23rd March 2000 by the order dated 25th November 1999. As lawyers were on strike on 23rd March 2000, notice was ordered to be issued to complainant for 6th December 2000 on which date case was postponed to 18th May 2001 for complainant's evidence. On that date following order came to be passed by the Metropolitan Magistrate: -

'Present: Counsel with complainant.

SHO to investigate the matter under section 156(3) CR. P.C. and register FIR. Put up on 26th September 2001 for report.'

3. In Tula Ram's case (supra) it was held by the Apex court that a Magistrate can order investigation under section 156(3) only at the pre-cognizance stage, that is to say, before taking cognizance under sections 190, 200 and 204. Obviously, impugned order dated 18th May 2001 ordering investigation to be made under section 156(3) Cr.P.C. by the SHO is bad in law as the Metropolitan Magistrate had already taken cognizance in the matter by the order dated 25th November 1999.

4. Accordingly, the petition is allowed. Impugned order is set aside with the direction that Metropolitan Magistrate would proceed with the matter in accordance with law.