

K. Velukutty and ors. Vs. State

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Court : Kerala

Decided On : Jan-23-1956

Reported in : 1956CriLJ1020

Judge : Koshi, C.J. and; Nandana Menon, J.

Appellant : K. Velukutty and ors.

Respondent : State

Judgement :

Koshi, C.J.

1. These three revision petitions arise from a pending prosecution before the Quilon Sessions Court. In C. C. No. 1 of 1955 the Quilon Police sought to prosecute five persons for commission of certain offences punishable under the Indian Penal Code. All the five persons were alleged to have committed the offence of cheating (Section 420), accused 3 and 5, who are public servants, of taking gratification other than legal remuneration in respect of an official act (Section 161) and accused 1, 2 and 4 abetment thereof (Section 165-A).

The case happened to be filed directly before the Sessions Court as per the provisions of the Criminal Law Amendment Act, 1952 and the charge-sheet was laid on 5-9-1955. In due course-all the five accused persons entered appearance and afterwards, on 8-10-1955 three of them, to wit accused 3, 4 and 5 filed a petition (Criminal M. P. 89) before the lower court alleging that the prosecution

was not maintainable inasmuch as the inclusion of the offences under Section 161 and Section 165-A was quite unwarranted as the facts alleged did not constitute the commission of any offence under either section and the case of cheating was compounded between the parties with the permission of the court which had originally seisin of the case.

The party aggrieved by the conduct of the accused persons laid his complaint before the police on 3-10-1953 and the P. I. R. which was sent to the Sub-Divisional Magistrate, Quilon referred only to Sections 420 and 34, I. P. C. With the permission of the Court the parties compounded the offence of cheating and an order to that effect was passed on 28-11-1954, This was the basis of Criminal M. P. 89 and the plea was that Section 403, Criminal P. C was a bar to the present prosecution initiated by the police charge-sheet filed before the Sessions Court on 5-9-1955.

Criminal M. P. 89 was followed by another application (Criminal M. P. 103) on 28-10-1955 by the very same accused persona and the purport of that application was that the Quilon Sessions Court had no jurisdiction to entertain the case as the acts alleged were all committed within the jurisdiction of the Trivandrum Sessions Court. The order sought to be revised before us is a consolidated order which the learned Sessions Judge passed on these two petitions.

The learned Judge found that the objection as to want of territorial jurisdiction was absolutely unfounded and that while the case of cheating had been validly disposed of by the Sub-Divisional Magistrate, the prosecution had to proceed with reference to the offence under Sections 161 and 165-A. Accused 3 has preferred Criminal R. P. No. 116 against this order and accused 4 and accused 5 Criminal R. P. No. 122. Though accused 1 did not make any application before the lower court he has filed Criminal R. P. No. 124 against the same order.

2. Though the revision petitions filed by accused 3 and accused 4 and 5 reiterate the grounds as to jurisdiction and the bar under Section 403, Criminal P.C. which those accused persons urged before the lower court, either ground was not pressed before us nor do we think that there is any substance in them. As pointed out by the learned Judge below the facts mentioned in the complaint and the

police charge-sheet clearly show that under Section 179, Criminal P.C. the Quilon Court was competent to try the case. As for the bar under Section 403 the learned Judge upheld it to the extent it was legally possible.

The contention that the bar would equally apply to the offences under Sections 161 and 165-A cannot be sustained as under Section 7, Criminal Law Amendment Act, 1952, the only court competent to try offences under those sections is the court of a special Judge which in this case happens to be the court of Sessions Judge, Quilon. The bar under Section 403 can apply only to a case when the former proceeding was before a court of competent jurisdiction. The opening words of Clause (1) of the section as also Clause (4) thereof make the matter clear beyond doubt. An offence under Section 161 or that under Section 165-A is not compoundable.

3. In the light of the above, it is only proper that counsel for accused 3, 4 and 5 virtually gave up the contentions as to want of jurisdiction of the Quilon Court and the bar under Section 403, Criminal P.C. The only ground that remained for him to be urged before us was that the averments in the complaint or the police charge-sheet did not disclose the commission of any offence under Section 161 or Section 165-A, I.P.C. The question raised by the revision petition filed by accused 1 is also the same, of course, with special reference to the case against him.

On his behalf it was urged that the material records now before the court did not show that there was the semblance of a case against him under Section 165-A and that he was therefore entitled to be discharged under Section 253(2), Criminal P.C. According to Mr.K. Velayudhan Nair, the learned Counsel for accused 1 if at all, the allegations made against accused 1 would amount only to his having been a party for cheating the complainant and as that offence is not triable any more it would be mere harassment for the case to be proceeded with as against him.

The prosecution would, however, have it that the facts constituting the offence of cheating and that of bribery and abetment thereof are all the same and the fact that the case of cheating cannot be proceeded with does not debar the prosecution for bribery and abetment thereof. It cannot be denied that the prosecution case is that and we fail to see why the case should not proceed on

normal lines.

We would at this stage desist from making any comments on the arguments raised by Mr. Nagappan Nair and Mr. Velayudhan Nair regarding the evidence of P. W. 1. Accused 1 had not claimed before the lower court that he should be discharged under Section 253(2) and it would not be proper for this Court in revision to do what the lower court was not asked to do.

As for the argument that the averments in the statement of the complainant and the police charge-sheet did not disclose the commission of any offence under Section 161 or 165-A we need only refer to what the learned Judge has said on this aspect: 'Though the first information report as well as Ext. P, 5, statement of complainant appended with it, contained the necessary ingredients of allegations for offences under Section 161 and Section 165-A the police had noted only Sections 420 and 34, I.P.C. in their report'. We are not prepared to say that this is a wrong appraisal of the true implications of the statement of the complainant before the police.

No question of quashing the proceeding under our inherent powers therefore arises and the case must in consequence take its normal course. It is to be tried as a warrant case. After the examination of P. W, 1 the lower court did not choose to act under Section 253(2). No motion in that behalf was made before it by any one of the accused persons and in all the circumstances of the case we fail to see why the prosecution should be prevented from placing all their evidence before the Court:

4. The revision petitions, therefore, fail. They have to be dismissed and we do so hereby.

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