

S. Velappan Vs. the State of Kerala

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Court : Kerala

Decided On : Feb-07-1964

Reported in : AIR1965Ker72; 1965CriLJ296

Judge : P. Govinda Menon, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 83 and 86(1)

Appeal No. : Criminal Reference No. 12 of 1963

Appellant : S. Velappan

Respondent : The State of Kerala

Advocate for Def. : State Prosecutor

Advocate for Pet/Ap. : V. Nagappan Nair, Adv.

Judgement :

ORDER

P. Govinda Menon, J.

1. This reference by the learned Sessions Judge of Trivandrum arises out of an application made by the petitioner S. Velappan to quash the order of the Sub-Magistrate, Trivandrum. The petitioner was arrested by the Sub-Inspector of Police, Vanchiyoore in execution of a warrant issued by the Bench of Magistrates,

Moradabad against the proprietor, Kathirvel and Co., Puthenchanthai, Trivandrum. He was arrested and produced before the Sub-Magistrate, Trivandrum-2 and as the offence charged was one under Sections 417 and 420 I. P. C., both bailable offences, the learned Magistrate released him on basis of taking a bond for his appearance before the Bench Magistrate's Court, Moradabad on 21-8-63, to which date the case stood posted for hearing. The petitioner's case is that the warrant directed the arrest of the proprietor, Kathirvel and Co., Trivandrum, that it does not mention either the name or the description of the person to be arrested, that he is not the proprietor of the company shown in the warrant and his arrest is illegal. The learned Sub-Magistrate dismissed the petition. The question for decision is whether the warrant issued in this case is legal.

2. Section 83 of the Criminal Procedure Code provides that when a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such court may forward the same by post or otherwise to any Magistrate or District Superintendent of Police or the Commissioner of Police for execution and the Magistrate or District Superintendent or Commissioner to whom such warrant is so forwarded shall endorse his name on the warrant and cause it to be executed. Section 86(1) says that such Magistrate or District Superintendent or Commissioner shall, if the person arrested appears to be the person intended by the court which issued the warrant direct his removal in custody to such court : Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate bail shall be taken and the security bond shall be forwarded to the Court which issued the warrant,

3. The scope of Sec. 86 C. P. C. arose in the case in *In re Sagarmal Khemraj*, AIR 1940 Bom 397. In that case the warrant was addressed to the 'O/C concerned' and refer to the two applicants merely by their names, the first 'Sagarmal Khemraj' and the other 'Kaluram Hira-chand' and in the margin of the warrant is a note initialled by the learned Chief Presidency Magistrate, Calcutta to this effect : 'Forwarded to the third Presidency Magistrate, Bombay, for favour of execution and return.' It was held that the warrants were- invalid because they did not sufficiently specify the person to be arrested. Their Lordships stated :

'The warrants only contain the surname and preceding name of the two accused, without any reference to address, description or occupation. There are probably a good many people in Bombay having the names referred to in these warrants, and all those persons could be arrested under the warrants, if valid. In my opinion, the warrants issued in this case are not sufficiently definite either in the name of the person to whom the warrant is addressed or in the description of the person to be arrested.'

4. A decision of this Court in Kunhunn/ Hair v. State of Kerala, 1961 Ker LT 463 has been brought to my notice. In that case a person was arrested and produced before the Sub-Magistrate, Mukundapuram in pursuance of a warrant issued by the Magistrate of Jaipur city in Rajasthan and was released on his executing a bail bond for his appearance before the Jaipur Magistrate. In the warrant the person to be arrested was shown as K. K. Nair, Manager, Asoha Industries, Alagappanagar. It was contended by the person arrested that he was not the person who is mentioned in the warrant. The Sub-Inspector who arrested him had filed an affidavit that there is no mis-take in identity and that the person mentioned in the warrant is none other than the petitioner. It was held that the use of the words 'appears to be' would show that an elaborate enquiry is not necessary and that the Magistrate is to be satisfied prima facie that the person arrested is the person mentioned in the warrant. The Bombay case was distinguished on the ground that in that case the warrant issued was not sufficiently definite either in the name of the person to whom the warrant was addressed or the name of the person to be arrested.

5. On the facts of this case the Magistrate could not have been satisfied with the vague description contained in the warrant that the person arrested is the person intended by the court which issued the warrant.

6. The reference of the learned Sessions Judge to quash the order is accepted. The order of the learned Sub-Magistrate is set aside and the bail bond executed by the petitioner would stand cancelled.