

EdwIn Tomson Vs. Kunhalikutty

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Court : Kerala

Decided On : Jan-25-2005

Reported in : 2005(2)KLT380

Judge : B. Subhashan Reddy, C.J. and; Cyriac Joseph, J.

Acts : Immoral Traffic Prevention Act - Sections 5; Indian Penal Code (IPC) - Sections 109, 341, 361, 366, 366A and 377; Code of Criminal Procedure (CrPC) - Sections 164 and 173(8)

Appeal No. : W.P.(C) Nos. 33821, 34015 and 34301 of 2004

Appellant : EdwIn Tomson

Respondent : Kunhalikutty

Advocate for Def. : M. Retna Singh, Advocate General,; P.C. Iype, State Attorney and;

Advocate for Pet/Ap. : Shaijan C. George,; John Vipin,; S.A. Sherly,;

Disposition : Petition dismissed

Judgement :

B. Subhashan Reddy, C.J.

1. These three Writ Petitions have been filed as pro bono publico seeking action against Mr. P.K. Kunhalikutty who was a Cabinet Minister in the present Government till first week of January of this year, but later resigned. He is the 2nd respondent in W.P.(C)No. 33821/2004, 1st respondent in W.P.(C)No. 34015/2004 and 4th respondent in W.P.(C) No. 34301/2004. Allegations are common to him to the effect that he is involved in the offences committed under Crime No. 282/1997 of Nadakavu Police Station, Kozhikode. The above crime was registered on the basis of a complaint lodged by Anweshi Women's Counselling Centre alleging commission of offences punishable under Sections 361, 366(A) and 377 of the Indian Penal Code.

2. One Ms. Sreedevi was alleged to be running commercial sex centre under the guise of running an ice cream parlour. Now, it is famously called as 'Ice cream parlour sex scandal'. No others were specifically named except the above lady and basing upon the said complaint lodged on 6.8.1997, Police swung into action and arrested the above lady who was arrayed as the first accused and later on, after investigation 15 more were added to the list of the accused making a total of 16 accused, and, according to the Police, the offences with which the above accused punishable are under Sections 366, 109 and 341 of the Indian Penal Code read with Section 5 (ia), (c) and (d) of the Immoral Traffic Prevention Act. The above 16 accused were identified by the police basing upon the evidence collected during investigation. After the conclusion of the investigation, charge-sheet has been filed before the Court of Magistrate which has then committed the case to Sessions Court and the same is pending trial in Sessions Case No. 124 of 2002.

3. In these Writ Petitions, though several facts are stated, but all lead to seeking of one main prayer, i.e. to prosecute Mr. P.K. Kunhalikutty who is hereinafter referred to as the '1st respondent'. The allegations are that he has got political clout being Secretary of Indian Union of Muslim League (IUML) and being the powerful Minister in the State Cabinet he was wielding great influence and because of the exertion of influence and money power, the Kerala Government and its crime investigating agency have saved him from prosecution in spite of availability of abundant evidence against him. He is alleged to have indulged in sex with one Ms. Rejina during the year 1997 and that she was a minor at that time and that, being

economically poor, she was unlawfully exploited for monetary considerations.

4. Anweshi Women's Counselling Centre led by Ms. Ajitha has lodged a complaint on 6.8.1997 pursuing the case vigorously. When the charge-sheet was sought to be filed by the Police after investigation, she has sought for further investigation by another agency on the ground that the investigation conducted by State Police was inadequate and fallacious for the reason that the State Police were under the influence of the 1st respondent and that he was also being saved by the Government of the day because of political clout he enjoyed. She has filed O.P. No. 18484/1997 before the Kerala High Court seeking investigation by Central Bureau of Investigation. Another person, namely, Kulakkadan Moosa also filed another Writ Petition, O.P. No. 3 8520/1997, for the very same relief. After hearing the matters, a learned Single Judge, by common judgment dated 30.7.1998, dismissed the above Writ Petitions holding that there was no case made out for ordering C.B.I. investigation either on facts or in law. The said judgment of the learned Single Judge was assailed in W.A.Nos. 1630 and 1717 of 1998. W.A. No. 1630/1998 came up first before the Division Bench and was dismissed on 13.8.1998 and the same reasoning was followed while dismissing W.A. No. 1717/1998 by judgment dated 28.8.1998. The matter was then carried to the Supreme Court and S.L.P.(Crl.)No. 3725/1998 was filed against the judgment in W.A.No. 1717/1998 and, thereafter, S.L.P.(C) No. 15787/1998 was filed against the judgment in W.A. No. 1630/1998. After hearing the parties, the Supreme Court, by its order dated 14.12.1998, directed respondents 1 to 3 therein to file affidavits to the satisfaction of the Supreme Court. After making further investigation, additional affidavits were filed by the above respondents. While Mr. Jacob Punnoose, Inspector General of Police filed affidavit on behalf of respondents 1 and 2 on 18.1.1999, Mr. Shekaran Miniyodan, the Deputy Inspector General of Police filed affidavit on behalf of the third respondent on 4.1.1999.

5. Meanwhile, after the conclusion of the investigation, the investigating agency filed charge-sheet in Crime No. 282/1997 on 2.12.1998 against the 16 accused. Ms. Ajitha filed Crl. M.P. No. 124/1999 for further investigation invoking Section 173(8) of the Code of Criminal Procedure in the Court of Judicial Magistrate of I Class-IV, Kozhikode and by order dated 17.2.1999, the Court directed further

investigation by the Police. The Police having made further investigation, submitted a report that only 16 accused originally arrayed were found to be involved in the commission of offences by stating categorically that there was no such material found to prosecute the first respondent and filed the final charge-sheet to the said effect before the Court of Magistrate on 2.6.1999.

6. Ms. Ajitha filed a petition, Crl.M.C. No. 4213/1999 before the Court of Magistrate on 16.6.1999 seeking a relief not to accept the charge-sheet and to order further investigation. But, the Court of Magistrate dismissed the petition against which she had filed Crl. M.C.No. 3246/1999 before the Kerala High Court seeking a prayer to quash the charge-sheet and order further investigation. By the said time, Special Leave Petitions came up for hearing before the Supreme Court on 30.8.1999 and on being apprised of the pendency of Crl.M.C. No. 3246/1999 before the Kerala High Court, the Supreme Court adjourned the above S.L.Ps. to be listed after the disposal of the above Crl.M.C. by the Kerala High Court. Crl.M.C. No. 3246/1999 having heard by the Kerala High Court, considering the contentions raised on behalf of the de facto complainant Ms. Ajitha and the State prosecution, passed an order on 4.3.2003 affirming the order of the Magistrate's Court and thus dismissing the said petition. Ms. Ajitha carried the matter to the Supreme Court by filing Special Leave Petition with a petition for condonation of delay in Crl.M.P. No. 8331/2003. The Supreme Court heard all the three Special Leave Petitions and by order dated 13.10.2003, dismissed all the three S.L.Ps. and the same is herewith extracted:

'S.L.P.(Crl.)...../2003 (Crl.M.P.8331/2003)

Delay condoned.

We have heard the learned counsel for the petitioner at length and perused the impugned judgment of the High Court, dated 4th March, 2003. We find no illegality in the impugned judgment of the High Court.

The Special Leave Petition is dismissed.

S.L.P.(Crl.) Nos. 3725/1998 & S.L.P.(C) No. 15787 of 1998

In view of the order passed in S.L.P. (Crl.) No./2003 (Crl.M.P. 8331/2003), these Special Leave Petitions are also disposed of.'

7. The provocation for filing these Writ Petitions is said to be the statement given to electronic media by Ms. Rajeena on 28.10.2004 to the effect that the first respondent had sex with her during the year 1997. On 28.10.2004, the first respondent was out of Country and when he reached by air on 1.11.2004, it is said that in the Airport, a large reception was accorded to him by the activists of Indian Union Muslim League (IUML), of which the first respondent is the Secretary. It is also said that, at that time, the party members of IUML indulged in violence against the media people both print and electronic.

8. These PILs can be entertained provided the essential requisites of a PIL are present. With the change of litigant, be it individual or body of persons, there cannot be any new cause of action. New cause of action has to be found on new facts coming to light. Prosecution by the person aggrieved and particularly in the case of a sexual offence is a rule and a PIL in that regard should be viewed as a rare exception. Neither the alleged victim Ms. Rejina nor her parents or blood relations preferred any complaint with police. The Women Organization mentioned above had lodged complaint on 6.8.1997. Dark deeds of sex scandal which would have been buried forever were unearthed because of the efforts of Anweshi Women's Counselling Centre. A high ranked woman police officer has forwarded the complaint to the concerned police station and the concerned police had responded to the said complaint and then registered it as a crime and investigated it. As only one accused's name was given, she was arrested first and after being satisfied that there was case made out on the information and materials gathered, then identified 15 other accused and proceeded further with investigation. Anweshi Women's Counselling Centre was of the opinion that some more accused and particularly the first respondent was the culprit and he has escaped from the claws of law and should be booked. Pleading that State police officers are under pressure to spare the first respondent from prosecution, investigation by central agency, i.e., Central Bureau of Investigation was sought for. This Court had examined the matter twice over, i.e., by the Single Judge in Writ Petitions and the Division Bench in Writ Appeals. This Court was of the view that neither on facts

nor in law there was any case made out for entrusting the investigation to C.B.I. Aggrieved by the said decisions of this Court, the matter was carried to Supreme Court. The Supreme Court also directed the high ranked State police officers to file affidavits to satisfy itself about the correctness of investigation and, in fact, the Supreme Court in no uncertain terms directed that such further investigation has to be done because of the severity of allegations and without succumbing to any pressure or influence and unmindful of great positions held by the persons against whom allegations are made. Two high ranked State police officers -- One Inspector General of Police and another the Deputy Inspector General of Police -- Made further enquiries by examining the relevant witnesses including Ms. Rejina and found that no case was made out against any person other than 16 originally arrayed as accused. With the dismissal of S.L.Ps. Nos. 3725 and 15787 of 1998, the statements made by the said officers in their affidavits dated 4.1.1999 and 18.1.1999 stand accepted. That is a final verdict of the Supreme Court that the State police had acted truly and diligently requiring no intervention by C.B.I. That apart, even on the investigation by the State police, nothing is left open by the Supreme Court so as to invoke Section 173(8) of Cr.P.C. Apart from the original investigation done and charge-sheet filed on 2.12.1998, on request by Anweshi Women's Counselling Centre, the Court of Magistrate had ordered further investigation in CrI.M.P. No. 124 of 1999 and then a final charge-sheet has been filed into the Court of Magistrate on 2.6.1999 after further investigation to the effect that no further proof was found to implicate the first respondent and reiterating the completeness and correctness of the first charge-sheet dated 2.12.1998. Even though the said charge-sheet was challenged in CrI.M.C. No. 3246 of 1999 in this Court, the learned Single Judge by his comprehensive and well considered order dated 4.3.2003 has dismissed the plea to quash the charge-sheet and affirmed the order of the Court of Magistrate dated 16.6.1999 passed in CrI.M.P. No. 4213 of 1999. The said order of the High Court in CrI.M.C. No. 3246 of 1999 has been challenged before the Supreme Court in S.L.P.(CrI.) .../2003 which was filed with a delay condonation petition in CrI.M.P. No. 8331/2003 and while condoning the delay in filing the said S.L.P., the Supreme Court has passed the order on merit affirming the order dated 4.3.2003 passed by the High Court in CrI.M.C. No. 3246 of 1999. This puts an end to any plea for further investigation by invocation of

Section 173(8) of Cr.P.C.

9. In view of the above, these Writ Petitions are misconceived. The cause having been espoused and the matter having culminated into a criminal action in Crime No. 282 of 1997 of Nadakavu Police Station and the same having been investigated into several times, firstly by the police in the regular course of investigation and secondly at the instance of the Supreme Court in exercise of the final appellate jurisdiction and thirdly by the Court of Magistrate exercising the statutory power under Section 173(8) Cr.P.C. and the charge-sheet having the seal of finality, the investigation part is exhausted and now the criminal case is in the realm of a Criminal Court and no outside intervention is called for. Each time Ms. Rejina makes a statement cannot give rise to a fresh cause of action. Ms. Rejina was examined by the police time and again and she had also made statements before, the Court of Magistrate under Section 164 Cr.P.C. three times. A person claiming to be a witness or victim cannot be heard to say endlessly. More than sufficient opportunity was afforded to the informant and witnesses. Matter has been thoroughly investigated concluding that only (16) accused charge-sheeted are liable to be tried and that no case is made out against the first respondent and the highest Court of the country has affixed its seal of approval to the manner and mode of the said investigation. The verdict of the Supreme Court is final and binding and no person or body can be allowed to take the aid of Public Interest Litigation system to either make an exercise or pass any orders resulting an affront to the final verdict of the Supreme Court.

In view of what is stated supra, we dismiss the Writ Petitions. Consequently I.A. No. 16228 of 2004 also stands dismissed.

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