

Sreenivasan Vs. Nair

Sreenivasan Vs. Nair

SooperKanoon Citation : sooperkanoon.com/720546

Court : Kerala

Decided On : Feb-14-2005

Reported in : 2005(2)KLT396

Judge : K. Padmanabhan Nair, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 120, 147, 148, 156(3), 200, 202, 202(1), 390, 392, 426, 448, 454 and 506(2)

Appeal No. : W.P.(C) No. 1334 of 2005

Appellant : Sreenivasan

Respondent : Nair

Advocate for Def. : P.M. Habeeb, Public Prosecutor

Advocate for Pet/Ap. : T.N. Hareendran and; Lissy T. Scaria, Adv.

Disposition : Petition dismissed

Judgement :

K. Padmanabhan Nair, J.

1. The complainant in M.P. No. 803 7 of 2004 on the file of Chief Judicial Magistrate, Ernakulam is the petitioner. This Writ Petition is filed challenging an order passed by the learned Chief Judicial Magistrate by which it was decided to

conduct an enquiry under Section 202 of the Code of Criminal Procedure on the complaint filed by the petitioner.

2. The petitioner is one of the Directors of M/s. Sujith Enterprises Pvt. Ltd. and Managing Director of Kalliyara Estates (Pvt.) Ltd. and Vasco Metals and Steels Pvt. Ltd. He is also stated to be the Managing Partner of G.P. Nair Plantations. It is averred that 41.5 cents of land in Survey No. 602/1 of Ernakulam Village along with a building standing thereon belongs to M/s.Sujith Enterprises Pvt. Ltd. 11 rooms in this building are rented out to various persons and the remaining rooms are occupied by M/s.Sujith Enterprises Pvt. Ltd. It is averred that rooms 1 to 5 are occupied by G.P. Nair Plantations, 6 to 14 by Kalliyara Estates Pvt. Ltd., 15 to 21 by K.K. Bhuvanadas Enterprises and 22 to 29 are let out to one V.R. Balakrishnan. It is averred that V.R. Balakrishnan sublet the rooms to Vasco Metals and Steels Pvt. Ltd. with the permission of the petitioner. It is averred that at about 10.00 p.m. on 11.11.2004, the respondents 1 to 6 along with a group of hired goondas, numbering around 100, broke open the lock of the gate, trespassed into the property, broke open the doors of the rooms and removed all the furniture. It is also alleged that they demolished the building by using an Earth Mover bearing registration No. KL-07/T8483. It is also alleged that the records were destroyed and furniture, the value of which will come to more than Rupees One lakh, were taken away. It is averred that the total loss caused to the petitioner will come to Rs. 75 lakhs. It is also averred that immediately the petitioner telephoned to the Police Control Room and Central Police Station. But, the police did not take any action. Therefore, the petitioner filed a private complaint before the Chief Judicial Magistrate, Ernakulam. It is averred that the Chief Judicial Magistrate refused to receive the complaint and asked the Advocate to present the complaint before the Judicial First Class Magistrate-II, Ernakulam. Accordingly the complaint was presented before the Judicial First Class Magistrate-II, Ernakulam. The J.F.C.M. also refused to accept the complaint stating that it has to be filed before the Chief Judicial Magistrate as the place of occurrence is within the jurisdiction of Central Police Station. It is averred that the petitioner approached this Court for a direction to proceed with the petition in accordance with law by filing W.P.(C)No. 34106 of 2004. This Court directed the Chief Judicial Magistrate, Ernakulam to receive the complaint and proceed in accordance with law. It is averred that accordingly the

petitioner again presented the very same complaint before the learned Chief Judicial Magistrate and the learned Chief Judicial Magistrate expressed the opinion of the Court that the Court is inclined to post the case for Section 202 enquiry and insisted for the examination of the complainant. It is averred that the counsel appearing for the complainant made a request to the Court to refer the matter to the Station House Officer concerned under Section 156(3) of the Code of Criminal Procedure. It is also averred that the learned counsel requested the Court not to discuss the merits or demerits of the case. But, the Court expressed its opinion that it is inclined to exercise the second option of conducting an enquiry under Section 202. It is averred that the approach made by the learned Chief Judicial Magistrate is not legal because the Court is insisting enquiry under Section 202 of the Code of Criminal Procedure in a matter where the petitioner seeks a relief of reference under Section 156(3) of the Code of Criminal Procedure. Therefore, the petitioner seeks to quash Ext.P-3 order dated 14.12.2004 passed by the learned Chief Judicial Magistrate posting the case for recording the sworn statement of the de facto complainant.

3. The petitioner filed a private complaint alleging that the respondents in the complaint committed the offences punishable under Sections 120-B, 147, 148, 426, 448, 454, 390, 392, 506(2) read with Section 149 of Indian Penal Code. In the complaint it is alleged that the petitioner is one of the Directors M/s. Sujith Enterprises Pvt. Ltd. and 41.5 cents of property with a building standing thereon belongs to that Company. It is averred that various portions of the building was let out to various tenants and the Company is occupying a portion of the same. It is averred that at about 10.00 p.m. on 11.11.2004 the respondents in the complaint along with about 100 others criminally trespassed into the building and after breaking open the locks, took away the records and committed robbery of electronic equipments worth about Rupees One lakh. It is also alleged that using an Earth Mover bearing registration No. KL-07/T8483 they destroyed the entire building and removed the old materials using which the building was constructed. It is averred that the loss due to destruction will come to Rupees 75 lakhs. It is also averred that though information was given to police, police had not taken any action. Hence the complaint.

4. According to the petitioner, originally he filed the complaint before the Chief Judicial Magistrate. The learned Chief Judicial Magistrate refused to accept the complaint and directed the petitioner to submit the same before the Judicial First Class Magistrate-II, Ernakulam. It is averred that the complaint was represented before the J.F.C.M.-II, Ernakulam. He also refused to accept it and directed the petitioner to re-present the same before the Chief Judicial Magistrate. The petitioner, therefore, filed W.P.(C) No. 34106 of 2004. This Court directed the Chief Judicial Magistrate to accept the complaint and proceed with it in accordance with law. The complaint was again presented before the Chief Judicial Magistrate and the Chief Judicial Magistrate by the impugned order has decided to conduct an enquiry under Section 202 of Cr.P.C.

5. When a complaint is received by the Magistrate, he has two options. He may either apply his mind for the purpose of proceeding under Section 200 and the succeeding Sections in Chapter XV of the Code of Criminal Procedure. He may instead of proceeding under Chapter XV, order investigation by the police under Section 156(3) of Cr.P.C. When the Magistrate decides to proceed under Section 200, he is said to have taken cognizance of the offence. If he refers the case to police, he cannot be said to have taken cognizance of any offence. If complaint is referred to Station House Officer under Section 156(3), the police has to register a case and investigate the same. The discretion is that of the Magistrate. There is no provision of law which compels a Magistrate to refer the matter to the police. When a person files a complaint, the discretion is that of the Magistrate. He may either take cognizance or refer the matter to the police. The complainant has no legal right or privilege to insist that the Magistrate shall not take cognizance and without taking cognizance, refer the matter to the police. In *Morarji Jivraj v. Emperor* (AIR 1935 Bom. 76), it was held as follows:--

'Secondly, the complainant has certainly no 'rights and privileges' under this section to require the Court to refer the case to the police.....'

The option whether to refer the complaint to the police for investigation under Section 156(3) before cognizance or under Section 202(1) after cognizance is to be exercised by the Magistrate. It is true that in the complaint the prayer was to

refer the matter to police. But, since the Magistrate has taken cognizance and decided to conduct enquiry under Section 202 Cr.P.C., this Court cannot compel the Magistrate to refer the complaint to the police under Section 156(3) of the Code of Criminal Procedure. It is well-settled position of law that when a Court passes an order with jurisdiction the same cannot be quashed. The learned counsel appearing for the petitioner relied on a decision of this Court reported in *George v. Jacob Mathew* (1996 (1) KLT 73) to argue that the Magistrate is bound to refer the matter to the police when a party prays for such a relief. As rightly noted in *George's case* (supra), Chapters XII and XIV subserves two different purposes. The principle laid down in that decision has no application to the facts of this case.

6. There is no merit in the Writ Petition and it is only to be dismissed.

In the result the Writ Petition is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com