

Moideen and ors. Vs. the State

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Court : Kerala

Decided On : Aug-12-1969

Reported in : 1970CriLJ920

Judge : P.T. Raman Nayar, C.J. and; V.P. Gopalan Nambiyar, J.

Appellant : Moideen and ors.

Respondent : The State

Judgement :

ORDER

1. By a notification issued on the 6th June, 1969, under the Madras Districts Limits Act, 1865, the State Government constituted (with effect from the 16th June, 1969) a new revenue district, called the district of Malappuram, taking in the southern portion of the old revenue district of Kozhikode and the northern portion of the old revenue district of Palghat. And, by notifications issued on the 16th June, under Sections 10 and 12 of the Criminal Procedure Code, the State Government purported to appoint the Collector of this new district and his Personal Assistant as first class Magistrates and Additional District Magistrates therein. There was, however, no appointment of a District Magistrate and no order made under Section 7 of the Code altering the number or the limits of the Sessions divisions or districts-the notification issued on the 22nd December, 1956 under that section constituting the area covered by the old revenue districts of Kozhikode and Palghat as the Sessions divisions, and, what we might call, the criminal judicial

districts of Kozhikode and Palghat, remains in force unaltered.

Therefore, it is obvious that the jurisdictions of the Sessions Judges and District Magistrates of Kozhikode and Palghat remain unaltered and that they continue to exercise jurisdiction as before over those parts of the old revenue districts of Kozhikode and Palghat that are now in the new revenue district of Malappuram. For, as pointed out in *In re Arumugha Solagan*, ILR 54 Mad 943 : (AIR 1931 Mad 697), a decision of a Bench of five Judges, with which we are in respectful agreement, the district of Section 7 the Code, what we have called the criminal judicial district, is a different thing from the revenue district, it is the area constituted into a district for purposes of criminal administration, whether in existence as such when the Code came into force-see Section 7(3)-or subsequently constituted by orders under Section 7(2) thereof, and for which a District Magistrate is appointed under Section 10. It has really nothing to do with the revenue district although it might be, and often is, defined in terms of a revenue district, and, although for historical reasons and reasons of administrative convenience, it almost always covers the same area as the corresponding revenue district.

Therefore, the Sessions Divisions of Kozhikode and Palghat continue to comprise the whole of the criminal judicial districts of Kozhikode and Palghat respectively and nothing more, and no question of their comprising anything but whole criminal judicial districts so as to offend Section 7(1) of the Code conceivably arises. And yet, when the question was raised before him in S.C. No. 10 of 1969 in respect of an offence committed within that part of his Sessions division that lies within the new revenue district of Malappuram, the learned Sessions Judge of Kozhikode held that although he had jurisdiction to try that case since the offence was committed before the 16th June, 1969, he would have no jurisdiction in respect of offences committed in the area in question on or after that date. This answer to a hypothetical question has understandably led to uncertainty, and to misgiving and anxiety to the administration, no less than to the general public, and, if right, would leave the area covered by the new revenue district of Malappuram without a Sessions Court or a District Magistrate, a state of affairs which should never have been and cannot be allowed to continue for a moment. Therefore, the order of the

Sessions Judge has been taken up in revision suo motu and is the subject-matter of CrI. R. P. No. 451 of 1969.

2. The reasons that induced the learned Sessions Judge to take the view he took cannot bear examination. It is nothing more than the misconceived appointment of the Collector of Malappuram as Additional District Magistrate for a revenue district which had not been constituted into a criminal judicial district and for which no District Magistrate had been appointed. He seems to have thought that the necessary result of the misconceived appointment was the constitution of a separate criminal judicial district for Malappuram under Section 7 of the Code, And this notwithstanding that the notification of the 22nd December, 1956 was left untouched. Because there can be an Additional District Magistrate only for a criminal judicial district, the appointment of an Additional District Magistrate for the Malappuram revenue district constituted that revenue district into a criminal judicial district although without a District Magistrate, seems to be his reasoning. And because Section 7(1) of the Code insists on a Sessions division being made up of a whole criminal judicial district or whole districts, the Sessions division of Kozhikode ceased to comprise that part of it which became part of the new Malappuram district, although the logical outcome of his reasoning should have been that the Kozhikode sessions division stood improperly constituted because it included a portion, and not the whole, of the new Malappuram district. Actually, it is the other way about. It is the misconceived appointment that is liable to be questioned; and we are clear that a criminal judicial district cannot be constituted under Section 7 of the Code, especially in the face of an existing express notification under that section, by the mere implication of an irregular appointment under Section 10. The decision in *Nawab Khambhukhan v. Emperor* AIR 1943 Sind 39 (FB), must be read in the light of the special facts of that case and is not authority for the proposition that the limits of existing criminal judicial districts can be changed, and a new district constituted, merely by the implication of an order appointing an Additional District Magistrate for a non-existent district.

3. As we have already stated, the answer returned by the learned Sessions Judge to the hypothetical question is wrong. The Sessions Judges and District Magistrates of Kozhikods and Palghat continue to exercise jurisdiction as before

over the portions of the old revenue districts of Kozhikode and Palghat that stand included in the new revenue district of Malappuram.

4. Cri. M. P. No. 493 of 1969 is an application for bail moved in a case where the offence was committed after the 16th June, 1969 within, what we might call, the Kozhikode portion of the new Malappuram revenue district. It ought to have been moved, in the first instance, before the Sessions Judge, Kozhikode, who as we have found, continues to exercise jurisdiction over the area in question, but has been brought direct to this Court in view of what the learned Sessions Judge said in S. C. No. 10 of 1969. In the special circumstances, we are disposed to entertain it instead of asking the petitioner to go to the Sessions Court before coming here.

5. Although the charge against the petitioner is of murder, it is not disputed that he is ill and is in hospital. The petitioner's case that an operation might be necessary at any moment and that he wants to get himself admitted into the Headquarters Hospital, Kozhikode, for the purpose, seems to be genuine. In the circumstances, we direct that the petitioner be released on bail on his executing a bond for Rs. 2000, with two sureties each in the like sum, to the satisfaction of the Sessions Judge, Kozhikode. The petitioner will not leave the limits of the Calicut Corporation without the previous permission of the Sessions Judge.