

Pradeepan Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/723103

Court : Kerala

Decided On : Jul-15-1981

Reported in : 1981CriLJ1356

Judge : U.L. Bhat, J.

Appellant : Pradeepan

Respondent : State of Kerala

Judgement :

ORDER

U.L. Bhat, J.

1. This is a petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short the 'Code') to auash the order passed by the Judicial Magistrate of the Second Class, Erna-kulam in Crl. M. P. No. 850 of 1981 in connection with Crime No. 418 of 1981 of the Central Police Station. Ernakulam.

2. A lady by name Razia Ueegum, aged about 22 years, was employed in the I.T.I. Kalamasseri and was staying in the hostel attached to that institution. It appears that on 15-5-1931 she and the petitioner herein entered into an agreement of marriage duly registered in the concerned Sub Registrar's Office, The second respondent herein, who is the father of the lady, filed a complaint before the Central Police Sation, Ernakulam. complaining that the lady is missing. He also

appears to have told the police about the information gathered by him on enquiries. He had certain suspicion. On receiving the complaint, a case was registered as Crime No, 418 of 1981 as girl missing. The same day reportedly on the order of the Assistant Commissioner of Police, Law and Order, Ernakulam, the S. I. of Police attached to the Central Police Station. Ernakulam, accompanied by a party of men and women constables, took away the lady from the residence of the petitioner herein. She was produced before the learned Magistrate, The Magistrate appears to have questioned her and she appears to have told the Magistrate that she would prefer to go with her father. Thereupon, the learned Magistrate passed the order to the following effect:

The girl Rasia is ordered to be sent along with her father, Pareeth Kuniu, on his executing a bond for production before this Court as and when called for.

This order was passed on a petition filed by the father. It is the legality of this order that is now challenged before me.

3. In this Court, Crl. M.P. No. 595 of 1981 was filed by the petitioner to secure the presence of the lady and with a request that this Court may question her about her desire. This was done. That lady was brought to my Chambers and I questioned her in the presence of the learned Counsel appearing for both sides. She said that she desires to live under the protection of her father and will have nothing to do with the petitioner.

4. It is argued before me that the learned Magistrate has treated the lady as an item of property and dealt with her in the same manner in which he would have dealt with an item of property produced before him. This practice has been condemned by this Court in the decision reported in *Sebastian v. State of Kerala* 1976. Ker LT 735. It is further argued before me that the concerned police officer had no jurisdiction to produce the lady before the Magistrate as she is not accused of any offence. There is yet another argument that the learned Magistrate, being Magistrate of the Second Class, had no jurisdiction to pass an order of the nature passed by him.

5. I shall first deal with the last argument based on Section 98 of the Code. According to Section 98 of the Code, on a complaint made before a Magistrate of certain specified offences, he can make an order of immediate restoration of the woman to her liberty and the minor girl to her guardian. There is no case that there was any complaint lodged before the Magistrate as contemplated under Section 98 of the Code. Therefore, the implied inhibition in Section 98 of the Code to the effect that such power cannot be exercised by Magistrates of the Second Class cannot apply to the facts of the present case.

6. Sections 41 and 42 in Chapter V of the Code lay down the circumstances under which power of arrest without warrant can be exercised by a police officer. Section 56 requires that a person so arrested has to be sent before a Magistrate, unless released on bail. A person arrested on a warrant issued by a court has to be produced before the court under Section 76 in Chapter VI of the Code and he has to be dealt with under Section 81. An accused person arrested in the course of investigation has to be forwarded to the nearest judicial Magistrate under Section 167(2) and dealt with as stated therein. Section 170(1) states that upon an investigation, an accused person has to be forwarded to the concerned Magistrate, if he cannot be released on bail.

7. Sri. P.V. Ayyappan, learned Counsel for the second respondent pointed out that a witness can be produced before a Magistrate under Section 171 of the Code. Section 170(2) authorises a police officer to require the complainant, if any and witness to execute a bond to appear before the concerned Magistrate as thereby directed and prosecute or give evidence. Proviso to Section 171 states that if the complainant or witness refuses to attend or to execute a bond as directed,, the police officer may forward him in custody to the Magistrate and thereupon the Magistrate may detain him in custody until he executes such bond or until the hearing of the case is completed.

8. My attention has not been drawn to any other provisions of the Code or any other law warranting arrest or production before a Magistrate of a victim of an alleged crime or a witness. As per the provisions of the Code, an accused produced before a Magistrate can be released on bail on his executing a bond and

in such a case, he can be directed to furnish sureties who have to execute surety bonds. A witness sent to court can be sent away or 'released' on his executing a bond for appearance. Instance of a lady rescued from moral danger has been referred to in the decision in Kunhikannan v. State of Kerala 1976 Ker LT 862. There is no other provision of law referred to me which authorises a Magistrate to entrust a witness (who is not a minor or suffering under any legal disability) to another person and requiring that person to execute a bond undertaking to produce the witness in court when required.

9. The provisions of the Code provide some guidelines to the Magistracy in dealing with persons produced before courts by police officers. A Magistrate has to take care to ascertain in what capacity and for what purpose a person is produced before him. If the person produced is an accused, he has to be dealt with accordingly under appropriate provisions of the Code. If the production is of a person in regard to whom search warrant has been issued under Section 97 of the Code or action taken under Section 98 that person has to be dealt with as contemplated in those provisions. If the production is of a complainant or a witness under the proviso to Section 171 that person can be detained in custody as stated therein or allowed to go or 'released' on execution of a bond, provided he or she is sui juris. In the case of minors or other persons under legal disability there is nothing wrong in their being handed over to parents or guardians on the latter executing bond for their appearance in court.

10. There may be yet other cases where a police officer in the course of investigation comes across a lady suspected of being a victim of an offence like kidnapping, abduction, wrongful confinement, etc. and is perplexed by controversies as to her marital status, as to her freedom of movement and the like and chooses to send her to a Magistrate. As at present advised, such a procedure may not have sanction of law. But. prudence and public policy dictate that courts should not reject out of hand such action on the part of the police officers. Magistrates should view such cases with understanding, caution and circumspection and deal with the situation in conformity with law, common sense and with judicial restraint. When a minor girl is so sent to court not from proper custody, she has to be dealt with as explained in Kunhikannan's case 1976 Ker LT

862. If the girl is a major, she must be allowed to go according to her own desire. A Magistrate must act with the consciousness that the person involved is a girl or a woman and as such the court has an added responsibility in the matter. She must be rendered all assistance consistent with her dignity and respect for womanhood. That is because every citizen looks to the court for protection and has every right to respectful treatment, courtesy, anxious consideration and protection from court. If a girl who is *sui iuris* wishes to live under the protection of her parent, relation or any other person, court must give her protection to do so. That can be done by allowing her to go with such person and telling her that she is at liberty to do so and assuring her that she will have protection of law in doing so. In appropriate cases, she can be required to execute a bond for appearance in court as directed. But, the person with whom she wishes to go cannot be required to execute a bond for 'producing' her in court. There is no legal sanction for doing so and such a practice has been condemned by this Court in Sebastian's case 1976 Ker LT 735. However, in the case of a girl or other person who is not *sui iuris*, the position may be different as explained in Kunhikannan's case.

11. There is no case before me that this lady is accused of having committed any offence. There is no material before me to show that investigating officer wanted her to execute a bond or that she refused to appear or execute a bond. Under these circumstances, it appears to me that the learned Magistrate had no jurisdiction to deal, in the manner in which he has done, with the lady. When the lady was produced before him, he should have first ascertained if she is an accused or whether she is a witness who can be dealt with as provided in Section 171 of the Code. If she was neither, the learned Magistrate should have allowed the lady to go without taking any further proceedings and without passing any order of the nature passed by him.

12. The order also does not appear to be happily worded. The learned Magistrate has stated in the order that the lady is ordered to be sent along with her father on his executing a bond. The fact that the order was passed on a petition filed by the father would *prima facie* show that the investigating officer did not request the learned Magistrate to pass an order of this kind. Whether the lady is an accused or a witness, the learned Magistrate should not have passed this order. As I have

already pointed out. the learned Magistrate should have allowed her to leave the court on her own, since she is a major. If the law permits him to take a bond from her either under Section 171 of the Code or otherwise, it was open to him to pass an order requiring her to execute a bond. The order does not show that the learned Magistrate was satisfied that this was a case in which he could lawfully require her to execute a bond. There was, therefore, no question of his directing the father to execute a bond for her production. The order in the way in which it is couched is certainly contrary to law and cannot stand. The same is hereby quashed. The lady in question is now under the protection of her father. That is the result of her own desire. As a person sui iuris she is entitled to reside with her father if that is her desire. The court cannot compel her to reside elsewhere. It is, therefore, unnecessary either for the learned Magistrate or for this Court to pass any specific order regarding her residence. If the learned Magistrate requires her presence as a witness or otherwise, it is open to him to take appropriate steps and pass appropriate orders in that behalf in accordance with law. With the above observations, the Criminal M.C. is allowed. Issue carbon copies of this order to the learned Counsel appearing on both sides on usual terms.