

Krishnan Moopan Vs. State of Kerala

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Court : Kerala

Decided On : Feb-18-2005

Reported in : 2005(2)KLT700

Judge : M. Sasidharan Nambiar, J.

Acts : Indian Penal Code (IPC) - Sections 379; [Code of Criminal Procedure \(CrPC\)](#) , 1973 - Sections 2, 41(1), 102, 173(2), 190, 190(1), 250, 250(1) and 250(2)

Appeal No. : Crl. R.P. No. 1154 of 1995

Appellant : Krishnan Moopan

Respondent : State of Kerala

Advocate for Def. : P.A. Raziya, Public Prosecutor and; S. Rajeev, Adv.

Advocate for Pet/Ap. : S. Aravindakshan Pillai and; Santha, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

M. Sasidharan Nambiar, J.

1. Revision petitioner was the accused in C.C.No. 84/90 on the file of Judicial First Class Magistrate, Cherthala. The charge was for the offence under Section 379 of Indian Penal Code. Petitioner was acquitted. While acquitting the learned Magistrate directed 2nd respondent, Sub Inspector who had arrested the petitioner and registered the crime to show cause why compensation shall not be paid under Section 250 of Cr.P.C. Second respondent showed cause in M.C.No. 21/93. But he was directed to pay compensation of Rs. 3000/-. Second respondent challenged the order in Cr.A.No. 144/93 before Sessions Court, Alappuzha. Learned Sessions Judge allowed the appeal and set aside the order of the Magistrate. Accused is challenging that order in the revision contending that he was not heard by the learned Sessions Judge and even if there was any illegality or irregularity, learned Sessions Judge should have remitted the case back to the Magistrate and should not have closed the case.

2. Heard Advocate Smt. Santha, learned counsel appearing for the petitioner and Mr. Rajeev counsel appearing for the second respondent.

3. C.C. No. 84/90 was a case taken cognizance of by the learned Magistrate on a report submitted by the Sub Inspector of Police, Pattanakkad who was examined as P.W.6 therein under Section 173(2) of Cr.P.C. That case was suo motu registered by the second respondent in his capacity as Sub Inspector of Police, Cherthala Police Station. Prosecution case was that petitioner was found in suspicious circumstances on the midnight of 10.11.1989 by the second respondent and he was arrested and Crime No. 348/89 of Cherthala Police Station was registered under Sections 41(1)(d) and 102 of Cr.P.C. Second respondent conducted the investigation and found out that petitioner had committed an offence under Section 379 of I.P.C. The second respondent finding that the offence was not committed within his jurisdiction but within the jurisdiction of Pattanakkad Police Station transferred the case records to the Pattanakkad Police Station. The Sub Inspector of that Police Station completed the investigation and laid the charge before the learned Magistrate which was taken cognizance of. The learned Magistrate while acquitting the revision petitioner herein held that the second respondent registered the case without any justification and as a result revision petitioner had to be in jail for three days and directed registration of a case

under Section 250 of Cr.P.C. Second respondent defended the proceedings under Section 250 of Cr.P.C. before learned Magistrate. But without considering the question whether there was reasonable ground for making the accusation solely relying on his earlier finding directed second respondent to pay compensation. When second respondent challenged it, the learned Sessions Judge finding that no enquiry as contemplated under Section 250 of Cr.P.C was conducted holding that the learned Magistrate should not have acted on his earlier finding and instead should have independently considered whether there was any reasonable cause for the second respondent to register the case set aside the order passed by the learned Magistrate. The question is whether that order is legal and proper.

4. Advocate Sri. Rajeev relied on the decisions of the High Court of Bombay in *Mohamed Meera v. Dattatraya Babaji*, AIR (34) 1974 Bom. 36, and the High Court of Sind in *Mohammad Hasum v. Emperor*, AIR 1940 Sind 134, and argued that the learned Magistrate could not have proceeded against the second respondent under Section 250 of Cr.P.C. and if at all the Magistrate could have proceeded only against the complainant or informant to the Police or the Magistrate.

5. Section 250 of Cr.P.C. reads:

(1) If any case instituted upon complaint or upon information given to a Police Officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one; or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that there was no reasonable ground for making the accusation, may, for reasons to be recorded, make an order that

compensation to such amount, not exceeding the amount of fine he is empowered to impose, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

Section 250 enables a Magistrate to proceed only if the case has been instituted upon complaint or upon information given to a Police Officer or to a Magistrate. It is mandatory that the case should have been instituted either upon a complaint or upon an information given to a Police Officer or to a Magistrate. Section 190 of Cr.P.C. deals with cognizance of the offences by Magistrate. A Magistrate is empowered to take cognizance under Section 190 either (a) upon receiving a complaint of facts which constitute such offence or (b) upon a police report of such facts or (c) upon information received from any person other than a Police Officer or upon his own knowledge of such offence has been committed. Complaint is defined under Section 2(d) of the Code. Any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown has committed an offence is a complaint. But it does not include a police report. Police report has been defined under Section 2(r) of the Code. Police report means a report forwarded by a Police Officer to a Magistrate under Sub-section (2) of Section 173. Therefore under Section 190(1)(a) receipt of a complaint contemplated is a complaint as defined under Section 2(d). Under Sub-clause (b) receipt of a police report contemplated is a report as provided under Section 2(r). Clause (c) deals with information received from any person other than a Police Officer or upon his own knowledge, that such offence has been committed. Section 250 applies only to a case instituted upon a complaint under Section 2(d) or upon information given to a Police Officer of a cognizable offence which forms the basis for a police report under Sub-clause (b) or on information to a Magistrate under Sub-clause (c) and taken cognizance of. Second respondent Sub Inspector is empowered to register a case under Sections 41(1)(d) and 102 of Cr.P.C. He registered the case on finding revision petitioner in a suspicious circumstance at an odd hour. It is after questioning revision petitioner second respondent found that an offence under Section 379 I.P.C. was committed and he submitted a report to the Court to that effect. After investigation it was revealed that the place of occurrence is not within his territorial jurisdiction. The case records were forwarded to Pattanakkad Police Station, where the case was

re-registered as Crime No. 134/89. The Sub Inspector of Police, Pattanakkad after completing the investigation laid the charge before the learned Magistrate which was taken cognizance of. Therefore cognizance was not taken on the report submitted by the second respondent but filed by the Sub Inspector of Police, Pattanakkad. Second respondent originally registered the crime as he is empowered to do so. Offence under Section 379 is a cognizable offence. Therefore even if it is taken that Sub Inspector of Police, Pattanakkad submitted the report under Section 173(2) of the Code, on the basis of the report submitted by the second respondent, that is only in respect of a cognizable offence which second respondent was bound to report. The question is whether proceedings under Section 250 of Cr.P.C. can be initiated against a Police Officer who submitted such a report.

6. Section 250 of Cr.P.C. makes it abundantly clear that proceedings under the Section cannot be initiated against a Police Officer who submitted a report under Section 173(2) of Cr.P.C. The case was not taken cognizance of on a complaint as defined under Section 2(d) of the Code. It was also not a case instituted on an information given by 2nd respondent to a Police Officer or Magistrate. The crime was registered by 2nd respondent suo motu in his capacity as the Sub Inspector. The offence was taken cognizance of by the learned Magistrate on the report filed under Section 173(2) of the Code of another Sub Inspector. Section 250 does not contemplate action under that section against a Police Officer on whose report cognizance was taken. Hence learned Magistrate could not have taken proceedings as against 2nd respondent Sub Inspector of Police under as Section 250 of Cr.P.C. as it does not apply to such a case. This view is supported by decisions of various High Courts.

7. A Division Bench of the High Court of Bombay in Mohamed Meera v. Dattatraya Babaji, AIR (34) 1974 Bom. 36, has considered this question. That was a case started on a report to the Police Station and prosecution before Magistrate was commenced on the report of the Sub Inspector. The Division Bench held that Section 250 does not apply to a case instituted on a Police report or on an information given by a Police Officer. The Division Bench held:

'Section 250 should be read in conjunction with Section 190, with which it is closely associated, and when they are read together it is obvious that Section 250 will apply to information given by a Police Officer, if that information can come as a complaint under Clause (a) of Section 190(1) but not if it amounts to a report under Clause (b) of that sub-section.'

The following observation of the Full Bench of the same Court in *King Emperor v. Sada*, 26 Bom. 150, reads:

'The Code has carefully specified the purposes for which and the occasions when the Police are empowered to make report as to offences committed or threatened and when they travel beyond them their reports cease to have the privilege conferred upon them by the Code and can only come within the definition of 'complaint' which is wide enough to include them.'

The Division Bench held that the same principle applies to information given by one Police Officer to another regarding a cognizable offence in the execution of his duties. The reason for exempting Police Officers from the operation of Section 250 was emphasised by the Division Bench as follows:

'The reason for exempting Police Officers from the operation of Section 250 is that it is their duty to report cognizable offences to higher Police Officers and Magistrates, and they should not be hampered in the performance of that duty by the fear of action being taken against them under that Section.'

A Full Bench of High Court of Sind in *Muhammad Hashim v. Emperor*, AIR 1940 Sind 134, followed the same principle. The Full Bench held that the words in Section 250 cannot be read at large, and divorced from the words of Section 190 of Cr.P.C. with which they are closely associated. The Full Bench also considered the question whether Section 250 of Cr.P.C. can apply to a case instituted on a police report or on information given by a Police Officer and answered the question that Section 250 Cr.P.C. will apply to information given by a Police Officer if that information can come as a complaint under Clause (a) of Section 190(1) Cr.P.C. but will not apply to a police report falling under Clause (b). The Full Bench therefore held:

Section 250, Criminal P.C. does not appear susceptible of a complete and logical application to all false and frivolous or vexatious cases. It will not apply, for instance, to punish the real complainant as against the formal complainant, but this remedy provided is a summary remedy and does not contemplate an inquiry which might be a long inquiry into a chain of informants to ascertain who is the real as against the formal complainant.

A Single Judge of Punjab High Court followed same dictum in Phula Singh v. The State, 1965 (2) CrL.L.J. 845.

8. The learned Magistrate failed to note that second respondent in his capacity as Sub Inspector of Police registered the crime and after investigation in part, forwarded the case records to the Sub Inspector of Police in whose territorial jurisdiction offence under Section 379 was committed. That Sub Inspector of Police submitted a report under Section 173(2) of the Code which was taken cognizance of under Section 190(1)(b) of the Code of Criminal Procedure. Learned Magistrate initiated action under Section 250 of Cr.P.C. against a Police Officer who suo motu registered the case in respect of a cognizable offence. Learned Magistrate could not have been taken action under Section 250 of Cr.P.C against that Police Officer. Therefore the very initiation of the proceedings under Section 250 of Cr.P.C. is illegal and will not stand.

9. The learned Sessions Judge set aside the order of the learned Magistrate holding that Magistrate did not follow the procedure provided under Section 250 of Cr.P.C. The learned Sessions Judge on the facts rightly came to that conclusion. Sub-section (1) of Section 250 of the Code enables a Magistrate while acquitting or discharging an accused to call upon the person to show cause why he should not pay compensation, if the Magistrate is of the opinion that there was no reasonable ground for making the accusation against the accused. Sub-section (2) provides the procedure to be followed. The requirement under the sub-section mandates that Magistrate has to record and consider the statement showing cause given by the complainant or informant, who is called upon to show cause under Sub-section (1). The Magistrate shall satisfy himself as to whether there was no reasonable ground for making the accusation. The Magistrate after

recording reasons for doing so has to pass an order of compensation by the complainant or informant as the case may be to the accused, if the Magistrate is satisfied that there was no reasonable ground for the accusation. The position has been considered by a Single Judge of this Court (as His Lordship then was) in *Prabhakaran v. Sukumaran Nair*, 1979 KLT 531. It was held:

'The correct position appears to be that at the stage when the Magistrate passes the order under Sub-section (1) of Section 250 Cr.P.C. he was only of opinion that there was no reasonable ground for making accusation, and therefore the complainant or the informant should be asked to show cause why an order for payment of compensation should not be passed against him. The requirement under Sub-section (2) appears to involve a consideration of the materials placed before the Magistrate in greater depth to satisfy himself whether there was no reasonable ground to make the accusation, and that is to be done after recording and considering the statement in which the complainant or the informant may show cause why action should not be taken against him, and finally for passing an order of compensation reasons have to be recorded. The expression 'if he is satisfied' used in Sub-section (2) of Section 250 Cr.P.C. as distinguished from 'is of opinion' in Sub-section (1) of Section 250 Cr.P.C. would indicate that before passing a final order under Sub-section (2), the Magistrate is required to give a more anxious and careful consideration to the question involved.'

The requirement and the object of Section 250 of Cr.P.C. was also considered by a learned Single Judge of this Court (as His Lordship then was) in *Balakrishnan Nambiar v. State of Kerala*, 1988 (2) KLT 518. His Lordship observed:

'The object is to deter persons from resorting to prosecution steps without reasonable ground. It is meant to serve as a check on propensities to rush to Criminal Court recklessly or to make accusation against innocent persons. At the same time, it should not be forgotten that indiscriminate invocation of the powers under this section might often deter a timid person from approaching the portals of law Courts, lest genuinely aggrieved persons disowned by witnesses could be exposed to the possibility of being mulcted with compensatory fine. The power under the section should therefore be exercised only in fit and proper cases.'

Ramaswami, J. in *Natesa v. Kanagasabai*, AIR 1954 Mad. 279, made a survey of the various decisions on the subject and struck a note of caution that 'indiscriminate use of the provisions might deter a timid person from approaching the portals of law Courts for fear that if per chance his witnesses turned round or somehow did not inspire confidence in the Court she may be mulcted in fine'.

10. When the Magistrate passes an order under Section 250 of Cr.P.C. directing the complainant or the informant to show cause why compensation shall not be paid, that does not mean that the Magistrate has finally decided that the complainant or the informant had no reasonable ground for making the accusation. It only amounts to an expression of his opinion on the facts as brought out at the time of the disposal of the case which ended either acquittal or discharge at the time of passing the final order. As provided by Sub-section (2) of Section 250, the Magistrate has to get satisfied that there was no reasonable ground for making the accusation. It could be arrived at only after giving a more anxious and careful consideration to, the question involved. The impugned order shows that the learned Magistrate did not consider the question at all and directed to pay compensation solely basing on the earlier opinion. There was no further consideration of that question or a final satisfaction as warranted under Sub-section (2). Therefore the learned Sessions Judge rightly set aside the order.

11. The learned counsel appearing for the petitioner argued that the learned Sessions Judge should not have closed the proceedings and instead should have remitted the case back to the Court below for proceeding afresh under Section 250 of Cr.P.C. in accordance with the procedure envisaged under the Code, in view of the finding that learned Magistrate could not have directed second respondent to show cause why compensation shall not be paid under Section 250 of Cr.P.C. I find no necessity to remit the case back to the Magistrate for fresh disposal. Advocate Rajeev also pointed out that in view of the law laid down by the Apex Court in *Nandkumar Krishnarao Navgire v. Jananath Laxman Kushalkar*, (1998) 2 SCC 355, the case cannot be remanded back to the Magistrate and only Magistrate who initiated the action can pass the final order. The position is correct. The Apex Court laid down that literal meaning if given to the 'the Magistrate' occurring in the opening of Sub-section (2) of Section 250, it violates the purpose

behind Section 250 which has a narrow scope. It was held that scope of the enquiry contemplated is very narrow, and so the Legislature perhaps thought that it should be in the nature of an addenda to the main enquiry or trial. It was held:

Therefore, the view has emerged in all the High Courts in the country that the same Magistrate alone can initiate action and pass the final orders. To mention a few precedents in that regard, attention be invited to *Rajaram Majhi v. Panchanan Ghosh*, *Emperor v. Mohd. Alan* and *Ram Nath v. Bashir-Ud-Din* and many others which exist, as have been noticed in the last mentioned Punjab case, It would thus be worthwhile to preserve the interpretation of the provision which would not disturb the unanimous understanding of the High Courts on the subject. We hold accordingly.

In any case an order of remand cannot be made as the final order could have been passed only by the Magistrate who initiated action under Section 250 of Cr.P.C. and not by his successor. Therefore no interference is warranted in the order of the learned Sessions Judge.

Criminal Revision Petition fails. It is dismissed.

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