

**Mohan Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Mar-14-2005

**Reported in :** 2005(3)KLT119

**Judge :** K.P. Balachandran, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 195, 195(1), 197(1), and 340; ;Indian Penal Code (IPC) - Sections 34, 463, 465, 466, 468, 471, 475 and 476

**Appeal No. :** CrI. M.C. No. 11641 of 2000

**Appellant :** Mohan

**Respondent :** State of Kerala

**Advocate for Def. :** K.I. Abdul Rasheed, Adv.

**Advocate for Pet/Ap. :** P.S. Sreedharan Pillai, Adv.

**Judgement :**

ORDER

**K.P. Balachandran, J.**

1. Petitioner a Public Servant being a Psychiatrist in service under the State Government has sought for an order taken pursuant thereto, seeking protection of

the inhibition under Section 195(1)(b)(ii) of the Code of Criminal Procedure.

2. The question of legal importance for consideration in the case is as to what is the alternate remedy available to the aggrieved party when the offender seeks shelter from prosecution under the bar provided in Section 195(1)(b)(ii) in the absence of a complaint filed under Section 340 CrI.P.C. by the Court concerned.

3. The petitioner is the second accused in Annexure 'A' F.I.R. in Crime No. 602 of 2002 of Thalassery Police Station registered for offences under Sections 465, 466, 468 and 471 I.P.C. read with Section 34 thereof. The investigation in the case is already over and the police have submitted final report also in the case. The case has been registered also on the file of Judicial First Class Magistrate's Court, Thalassery as C.C.No. 515 of 2002.

4. The final report is extracted below for reference.

5. According to the petitioner the matter could not have been investigated into by the police and final report should not have been submitted before the Magistrate and that in any event the Magistrate should not have taken cognizance of the matter as the offences are alleged to have been committed in relation to documents given in evidence in O.S.No. 232 of 1998 and O.S.No. 336 of 1999 on the file of the Subordinate Judge's Court, Thalassery.

6. The relevant provisions of Section 195 of the Code of Criminal Procedure reads:

' 195 (1). No Court shall take cognizance--

(a)(i)

(ii)

(iii)

(b)(i)

(ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476, of the said Code, when such offence is alleged to

have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.'

7. The Sub Judge, Thalassery while disposing of the case by a common judgment in both the above suits only observed that Exts.B-9, B-10 and B-11 documents which are prescriptions issued by the petitioner/second accused, a Psychiatrist are prima facie forged and fabricated in collusion with the first accused with a view to furnish false evidence before Court to support the claim of the first accused and left the matter observing as follows:

'It is for the other parties interested to probe deeper and work out the position further and find out what was the corresponding telephone number of D.W.2 in 1992 and when all that number of 1992 had under gone changes till 2000 and to take appropriate legal action both civil and criminal or otherwise as they choose fit in the matter.'

8. It is probably on account of such an observation in the judgment that the first plaintiff in O.S.No. 232of 1998 who was the first defendant in O.S.No. 336 of 1999 has given Annexure 'A' first information statement and caused the crime registered at the Thalassery Police Station. It is the contention of the petitioner that in view of the inhibition contained in Section 195(1)(b)(ii) of the Code of Criminal Procedure the Magistrate should not have taken cognizance of the final report submitted before him and that therefore Annexure 'A' F.I.R. and proceedings pursuant thereto culminating in Annexure 'B' final report which has been taken cognizance of by the Judicial First Class Magistrate, Thalassery has to be quashed.

9. It is now well-settled that Section 195(1)(b) is mandatory. Section 195(1)(b) and Section 340 shall be read together. Section 340 lays down the procedure as to how the bar imposed by Section 195(1)(b) is to be removed. The question whether the bar under Section 195(1)(b)(ii) operates in respect of a document forged prior to filing thereof in the Court is seen submitted to be placed for consideration before a larger Bench of the Supreme Court vide record of proceedings reported in

Balasubramaniam v. State, (2002) 7 SCC 649.

10. Courts cannot view offences of this nature in a light manner when prima facie it is satisfied that false evidence has been let in by forging document for the purpose of the case pending before it. The Apex Court in Narayandas v. State of Karnataka and Ors., AIR 2004 SC 555 has set aside the order of the Karnataka High Court quashing a First Information Report registered on a similar complaint and has held referring also to the decision in State of Haryana v. Bhajanlal, (1992) Supp. (1) SCC 335, that the provisions of Sections 195 and 340 of the Code of Criminal Procedure do not circumscribe the power of the police to investigate into the crime of fabricating false evidence; that the inhibition in Section 195 of the Code of Criminal Procedure is applicable only on the investigation being completed and that on the basis of the first information report and materials collected during investigation the Court could very well file a complaint under Section 340 of the Code of Criminal Procedure. In the instant case therefore, the de facto complainant is entitled to file an application under Section 340 Cr.P.C. on the basis of Annexure 'A' First Information Report and the materials collected during investigation in the case. But in view of the inhibition in Section 195(1)(b)(ii) of the Code of Criminal Procedure, this Court is constrained to quash Annexure 'B' final report and proceedings taken on the basis thereof by the Judicial First Class Magistrate's Court, Thalassery.

11. The contention incidentally urged that sanction under Section 197(1) was also to be obtained as the petitioner is a Government Servant is however not tenable as the offence alleged to have been committed are not such as are possible to be committed by the petitioner/2nd accused while acting or purporting to act in the discharge of his official duties.

In the result, while quashing Annexure 'B' final report and all proceedings taken by the Judicial First Class Magistrate, Thalassery on the basis thereof, the de facto complainant in Annexure 'A' F.I.R. is permitted to make an application under Section 340 of the Code of Criminal Procedure before the appropriate Court for appropriate steps being taken. The prayer to quash Annexure 'A' F.I.R. is rejected.

The Criminal Miscellaneous Case is disposed of as above.

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