

Bineesh Vs. State of Kerala

Bineesh Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/725646

Court : Kerala

Decided On : Jun-20-2006

Reported in : 2007CriLJ414; 2006(3)KLT364

Judge : J.B. Koshy and; M. Sasidharan Nambiar, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 2, 73, 78 to 81, 167, 267, 267(1), 267(2)

Appeal No. : Crl. M.C. Nos. 4162 of 2005 and 150 of 2006

Appellant : Bineesh

Respondent : State of Kerala

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : C.P. Udayabhanu and; P. Sanjay, Advs.

Judgement :
ORDER

J.B. Koshy, J.

1. A Learned Single Judge of this Court referred this matter to the Division Bench to consider the question whether under Section 267 of the Code of Criminal Procedure, Magistrate can issue a production warrant and remand the accused

who is already in remand in another case, for the purpose of enabling the police for interrogation. In *Bineesh v. State of Kerala* 2006 (1) KLT 505 learned single Judge of this Court held that it is not possible as under Section 73 arrest warrant can be issued to a person who is accused in a nonbailable offence only if he is evading arrest and that also can be exercised only against a person residing in the local limits of the Magistrate. Learned Judge held as follows:

So the question now is that whether the courts of Perumbavoor and Chavakkad has got the power to issue a production warrant against the petitioner who is already arrested and detained in judicial custody by the Mararikulam Court. The power under Section 73 can be exercised by a Magistrate of the First Class only against a person who is within its local limits and also against a person who is evading arrest or escaping from arrest as an escaped accused. The petitioner in this case is not an escaped accused but is retained in judicial custody by a Court of competent jurisdiction. Hence the applications now filed by the officers are irregular and it cannot be entertained by the Magistrates concerned.

Similar view was taken by a Division Bench of the Rajasthan High Court in *Bharti Sachdeva v. State of Rajasthan* 1996 CrL.J.2102 . In that case, the court was of the opinion that warrant cannot be issued for production of a prisoner for investigation of another case against him. The above judgment was overruled by a Full Bench of the Rajasthan High Court in *State of Rajasthan v. Santosh Yadav* 2005 CrL.J. 1830 FB and it was held that police can seek permission to remove an accused from judicial custody to police custody for completion of investigation in another case. The Court held as follows:

28. A bare reading of Section 2(h) Cr.P.C. would show that 'all the proceedings' conducted by a police officer for collecting evidence come under the definition of 'investigation'. The words 'all the proceedings' referred in Section 2(h) in our considered opinion would also include the expression used in the words 'other proceeding under this code' (Section 267 (1), 'for the purpose of any proceedings against him' (Section 267(1) (a) and 'for the purpose of such proceeding' (last portion of Section 267 (1)). In order to further the ends of justice wider meaning is required to be given to the word 'proceeding' used in Section 267, Cr.P.C. Had the

Legislature intended to give restrictive meaning to the words 'other proceeding under the Code' (Section 267 (1)), they would not have used the expression 'for the purpose of any proceedings against him' in Section 267(1)(a).

31. In view of what we have discussed herein above we answer the question referred to us as under: The Police can seek permission to remove an accused from judicial custody to police custody for completion of investigation in another case and for this purpose production warrant under Section 267, Cr.P.C. can be issued. The expression 'other proceeding' used in Section 267 (1) and 'for the purpose of any proceedings' occurring in Section 267 (1) (a) would include 'investigation' as defined under Section 2(h) Cr.P.C.

Similar view was taken by the Madras High Court in C. Natesan v. State of Tamil Nadu 1999 Cri.L.J. 1382.

2. Section 267 Cr.P.C. reads as follows:

267. Power to require attendance of prisoners;- (1) Wherever, in the course of an inquiry, trial or other proceeding under this Code, it appears to a Criminal Court.-

(a) a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him, or

(b) that it is necessary for the ends of justice to examine such person as a witness, the Court may make an order requiring the officer in charge of the prison to produce such person before the Court for answering to the charge or for the purpose of such proceeding or as the case may be, for giving evidence.

(2) Where an order under Sub-section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by the officer in charge of the prison unless it is countersigned by the Chief Judicial Magistrate to whom such Magistrate is subordinate.

(3) Every order submitted for countersigning under Sub-section (2) shall be accompanied by a statement of the facts which, in the opinion of the Magistrate,

render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.

The expression 'other proceeding' used in Section 267(1) and 'for the purpose of any proceedings' occurring in Section 267(1)(a) would include 'investigation' as defined under Section 2(h) Cr.P.C. and it covers investigation of all offences. Even though Section 73 of Cr.P.C. gives power to the Magistrate to issue arrest warrant within the local jurisdiction, Sections 78 to 81 prescribe the procedure to be adopted for execution of warrant outside the local limits of the jurisdiction of the court which issued the same. Power under Section 267 Cr.P.C. to require attendance of a person and remand is not controlled by Section 73 which deals with power to issue arrest warrant to an accused of a nonbailable offence who is evading arrest. Both deals with different factual situations. Section 73 deals with a person who is evading arrest whereas Section 267(1) deals with power of the court to require a person who is already in prison to be present in court.

3. As held by the Bombay High Court in *State of Maharashtra v. Yadav Kochachade* 2000 CrLJ 959, proceedings under Section 267 mean and include an action or prosecution and all steps taken in furtherance of prosecution, i.e., arrest, remand, interrogation and investigation. In *Ranjeet Singh v. State* 1995 CrLJ.3505, Allahabad High Court held that the words 'or for the purpose of any proceedings against him' in Section 267(1)(a) are compendious and include proceedings encompassing all stages and have in their fold remand proceedings and even proceedings of an investigation. The mere fact that committal proceedings in respect of the accused are pending in one district, does not take away the jurisdiction of the Magistrate of another place to pass an order under Section 267. In *Bobby v. State of U.P.* 2000 CrLJ 4125 a Division Bench of Allahabad High Court held that the provisions of Section 267 can be made applicable during the investigation. In *CBI Special Investigation Call-1, New Delhi v. Anupam J. Kulkarni* AIR 1992 SC 1768 it was held that though the police custody shall not exceed the first fifteen days, that limitation under Section 167 shall not apply to a different occurrence in which complicity of the arrested accused is disclosed. It is further held that it would be a different transaction and if an accused is in judicial custody in connection with one case and to enable the

police to complete their investigation of the other case they can require his detention in police custody for the purpose of associating him with the investigation of the other case. The Apex Court in the above case held as follows:

However, we must clarify that this limitation shall not apply to a different occurrence in which complicity of the arrested accused is disclosed. That would be a different transaction and if an accused is in judicial custody in connection with one case and to enable the police to complete their investigation of the other case, they can require his detention in police custody for the purpose of associating him with the investigation of the other case. In such a situation, he must be formally arrested in connection with other case and then obtain the order of the Magistrate for detention in police custody.

In view of these plethora of decisions, we agree with the Learned Single Judge (Justice Mr. Padmanabhan Nair) who referred this case to Division Bench that:

A reading of Section 267 of Cr.P.C. shows that the words 'or for any purpose of any proceeding against him' is wide enough to cover questioning of any prisoner detained in a prison. I am of the considered view that the legal position as interpreted in Bobby's case (supra) Natesan 's case (supra) and Yadav Kochachade's case (supra) lay down the correct law and the legal principles laid down in Bineesh's case (supra) are not correct.

We adopt the reasonings of Full Bench decision of the Rajasthan High Court in Santosh Yadav'a case (supra) which reiterated the binding observation of the Apex Court. In the above circumstances, the decision in Bineesh's case 2006 (1) KLT 505 is overruled. We hold that even if a person is under remand by the order of a Magistrate in a criminal case, if another case is registered against him in another Magistrate's court, that Magistrate is justified in issuing production warrant for the purpose of investigation in that case under Section 267 Cr.P.C.

Learned single Judge while referring the matter was also of the opinion that action should be taken against the petitioner as well as the lawyer for suppression of material facts and making false averments. It was contended that before making such an observation, they were not put on notice. Petitioner and his advocate are

required to give a detailed explanation for the same and show cause why action should not be taken against them for the reasons stated in the reference order within one month from today. We are not entering into any finding in respect of the same without hearing them in detail on that aspect.

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