

Raghunathan Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/727835

Court : Kerala

Decided On : Aug-24-2001

Reported in : 2002CriLJ337

Judge : G. Sasidharan, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 5(1), 5(2), 5(3), 156(3), 161(3), 164, 173(4) and 251A; [Prevention of Corruption Act, 1988](#) - Sections 5, 5(3), 13(1) and 13(2); [Indian Penal Code \(IPC\), 1860](#) - Sections 161 and 165

Appeal No. : Crl. M.C. No. 1668 of 1999

Appellant : Raghunathan

Respondent : State of Kerala

Advocate for Def. : P.K. Babu, Public Prosecutor and; T.G. Rajendran, Adv.

Advocate for Pet/Ap. : S. Vijaya Kumar, Adv.

Disposition : Crl. M.C. dismissed

Judgement :

ORDER

G. Sasidharan, J.

1. The question which arises for consideration is whether before registering a crime on the basis of a private complaint forwarded to the Vigilance Special Cell for investigation under S. 156(3) Cr. P.C. from the Court of the Enquiry Commissioner and Special Judge, Vigilance, is it mandatory that the Vigilance Special Cell has to conduct a preliminary enquiry.

2. The petitioner is the accused in a Crime registered by VACB Special Cell, Kozhikode. The above crime was registered by the Superintendent of Police, VACB, Special Cell, Kozhikode on the basis of a complaint forwarded from the court under S. 156(3) Cr. P.C. for investigation. The private complaint was given by the second respondent in the Court of the Enquiry Commissioner and Special Judge, Vigilance, Kozhikode and it was from that court, it was forwarded to the police for investigation. At the time of registering the crime, Annexure B F.I.R was prepared by the Superintendent of Police.

3. The allegation against the petitioner is that he had amassed wealth disproportionate to his known source of income since January, 1990 while he was working in various posts in the Public Works Department. Crime was registered alleging commission of offences punishable under S. 13(2) read with S. 13(1)(e) of the [Prevention of Corruption Act, 1988](#) (hereinafter referred to as 'the Act'). This CrI. M.C. is filed for quashing Annexure A complaint, Annexure B F.I.R. and all further proceedings in Crime No. 1 of 1999 of the VACB Special Cell, Kozhikode.

4. The learned counsel appearing for the petitioner submits that before registering the crime, the Superintendent of Police would have conducted a preliminary enquiry. The contention is that because the crime was registered without conducting a preliminary enquiry, registering of the crime cannot be said to be proper. Another point raised is that the Special Judge has no authority to send a private complaint under S. 156(3) Cr. P.C. to the police for investigation. It is on the above two grounds that quashing of the complaint, the F.I.R. and all further proceedings in the crime is sought for. In *P. Sirajuddin v. State of Madras*, AIR 1971 SC 520, it was held by the Supreme Court that before a public servant, whatever be his status, is publically charged with acts of dishonesty which amount to serious misdemeanour and a first information is lodged against him, there must

be some suitable preliminary enquiry into the allegations by a responsible officer. In the above case, the Chief Minister when he received a petition containing allegations against the Chief Engineer, asked the Director of Vigilance and Anti-Corruption to make confidential enquiries. The Chief Minister obtained a report from the Director of Vigilance and Anti-Corruption after making enquiries and then the Chief Minister gave a note to the P.W.D. Secretary stating that he had already received a report from the Director of Vigilance and the matter has to be looked into. The P.W.D. Secretary was also informed that the Chief Minister had already asked the Director of Vigilance to pursue investigation in the matter. The Chief Secretary orally ordered a full-fledged enquiry in the matter and the Deputy Superintendent of Police, Vigilance and Anti-Corruption was directed to make a personal enquiry and give a report. A thorough enquiry was conducted by the Vigilance and Anti Corruption Department on examining a large number of persons and statements in writing a signed by the persons questioned were taken. Thereafter, a First Information Report was lodged in the Directorate of Vigilance and Anti-Corruption alleging offences under Ss. 161 and 165 I.P.C. and S. 5(1) (a) and (d) of the Act. On completing investigation, sanction to prosecute the Chief Engineer was obtained the charge sheet was filed in the Court of the Special Judge. The Chief Engineer who was made accused in the crime moved an application before the Special Judge for discharge under S. 251A Cr. P.C. on the ground that the charges against him were groundless. The Special Judge found that there was no basis for charging the accused under S. 165 I.P.C. or under S. 5(2) read with S. 5(1)(b) of the Act and that charge could be framed against him under S. 5(2) read with S. 5(1)(d) of the Act. Against the order of the Special Judge, the Public Prosecutor preferred Crl. R.C. and the accused preferred Crl. M.P. for quashing the proceeding him as the charge was groundless. The accused filed two writ petitions before the High Court, one for a writ of mandamus directing the forbearing from prosecution and the order for a writ of certiorari to quash the order of the Special Judge. The High Court found partly in favour of the appellant and he held that the order of the Special Judge directing framing of charge on consideration of the statement before him under S. 173(4) of the Code without reference to the illegalities in the investigation should be quashed. The High Court also directed the Special Judge to take up the matter once again excluding from

consideration all statements recorded under S. 161(3) and 164 Cr. P.C. which were found vitiated in the light of the observation made by the High Court. The question whether the preliminary enquiry conducted by the Vigilance department before registering the crime was proper also came up for consideration.

5. The Supreme Court on a consideration of the procedure adopted against the accused in that case observed that in its opinion the procedure adopted against the appellant before laying of the First Information Report, though not in terms forbidden by law, was so unprecedented and outrageous as to shock one's sense of justice and fairplay. It was after observing as stated above that the Supreme Court said that when allegations about dishonesty of a person of the appellant's rank (Chief Engineer) were brought to the notice of the Chief Minister, it was his duty to direct an enquiry in the matter. The Supreme Court was saying in the above decision about the necessity of conducting a preliminary enquiry regarding the allegations raised against a Government servant and that enquiry, which according to the Supreme Court is necessary, is not one which has to be conducted by the Vigilance Department. What the Supreme Court said was that a suitable preliminary enquiry into the allegations levelled against a public officer has to be done by a responsible officer. It is true that the Supreme Court said that if the Government had set up a Vigilance and Anti-Corruption Department, as was done in the State of Madras, and the said Department was entrusted with enquiries of those kind, no exception can be taken to an enquiry by officers of that Department but any such enquiry must proceed in a fair and reasonable manner. The Supreme Court was emphasising the need to have a preliminary enquiry by a responsible officer into the allegations levelled against a public servant and at the same time observed that such an enquiry can be conducted even by Anti-Corruption Department provided the enquiry is conducted in a fair and reasonable manner and the Enquiring Officer does not act under any preconceived idea of guilt of the person whose conduct was being enquired into. So, the decision of the Supreme Court cannot be understood as one which lays down the proposition that in all cases preliminary enquiry has to be conducted by the Vigilance department before a crime is registered in that Department.

6. On going through the above decision of the Supreme Court, it could be seen that the Supreme court was dealing with the registering of crime on the basis of the first information given to the police. But here, Vigilance Cell registered the crime on the basis of a complaint forwarded by the court under S. 156(3) Cr. P.C. for investigation. When a complaint is forwarded to the police under S. 156(3) Cr. P.C. for investigation, the police is bound to register a crime and investigate. Even if the police conducts a preliminary enquiry regarding the allegations made in the private complaint, the police cannot say that there is no need for registering a crime on the basis of the private complaint. As per the decision of the Supreme Court, the Vigilance Cell can conduct a preliminary enquiry when information is given to the Vigilance Cell regarding commission of the offences under the Act and the Vigilance Cell proposes to register a crime on the basis of that information. But the Vigilance Cell is bound to register a crime on the basis of the complaint sent to it for investigation under S. 156(3) Cr. P.C. and hence the Vigilance Cell cannot be faulted for registering a crime without conducting a preliminary enquiry.

7. S. 5 of the Act says that a Special Judge may take cognizance of offences without the accused being committed to him for trial and in trying accused persons, the special Judge has to follow the procedure prescribed by the Code of Criminal Procedure. S. 5(3) of the Act says that save as provided in sub-s. (1) and sub-s. (2), the provisions of the Code of Criminal Procedure shall, so far as they are inconsistent with the Act, apply to the proceedings before a Special Judge and for the purposes of the said provisions, the Court of the Special Judge shall be deemed to be a Court of Session. Pointing out the above provision, it is maintained that the Special Judge has to be deemed to be a Court of Session and for that reason the Special Judge has no power to send a private complaint received for investigation under S. 156(2) Cr. P.C. The above sub-s. (3) and S. 5 of the Act does not say that a Special Judge can exercise only the powers of a Sessions Judge. In saying, in the above sub-section, that the Special Judge shall be deemed to be a Court of Session, the intention of the Legislature can only be to give the Special Judge the status of a Session Judge. That provision should not be understood as one meaning that in exercising the powers of the Special Judge, he can only have the powers of a Court of Session. In *A.R. Antulay v. R.S. Nayak*, AIR 1984 SC 718, the Supreme Court held that a private complaint can be

entertained by the Special Judge in respect of offences committed by public servants under the provisions of the Act. The Supreme Court held as stated above on accepting the principles of criminal jurisprudence that anyone can set or put the criminal law in motion except where the statute enacting or creating an offence indicates to the contrary. When it is said that the Special Judge can receive a private complaint alleging commission of offences under the Act and proceed on the basis of that, it implies that all the procedures prescribed under the Code of Criminal Procedure for dealing with a private complaint can be followed by the Special Judge. Different provisions of the Code say as to what the Magistrate has to do on receiving a private complaint. Under S. 156(3) Cr. P.C., the Magistrate on receiving a private complaint can forward the same to the police for investigation. In so far as there is no provision in the statute which says that a private complaint received by the Special Judge should not be sent to the police for investigation under S. 156(3) Cr. P.C. necessarily the Special Judge will have the power to send the complaint to the police for investigation.

8. In A.R. Antulay's case (supra), it was held that the court of a Special Judge is a Court of original criminal jurisdiction. As a Court of original criminal jurisdiction, in order to make it functionally oriented, some powers were conferred by the statute setting up the Court. In the above decision, it was held that except those specifically conferred and specifically denied, the Special Judge has to function as a Court of original criminal jurisdiction not being hindered by the terminological status description of Magistrate or a Court of Session. Under the Code, the Special Judge will enjoy all powers which a Court of original criminal jurisdiction enjoys save and except the ones specifically denied. The Court of Special Judge being the Court of original criminal jurisdiction, Special Judge can send a private complaint received by him to the police for investigation under S. 156(3) Cr. P.C. So, there was nothing improper in sending a private complaint to the police for investigation and also the police registering a crime on the basis of the private complaint.

9. The CrI. M.C. is hence liable to be dismissed and I do so.