

Jose Vs. State of Kerala

Jose Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/727871

Court : Kerala

Decided On : Jun-15-2001

Reported in : 2001CriLJ4902

Judge : G. Sivarajan, J.

Acts : [Constitution of India](#) - Article 226; [Code of Criminal Procedure \(CrPC\)](#) , [1973](#) - Sections 41(1), 133(1), 155(2), 156(1) and 482; [Indian Penal Code \(IPC\)](#), [1860](#) - Sections 34, 143, 147, 148, 149, 323, 324, 326, 341, 354, 427, 452 and 506(1); Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3(1) and (2); Panchayat Raj Act; Explosives Act; Minor Metals and Minerals Excavation Act; Minor Metals and Minerals Excavation Rules

Appeal No. : O.P. No. 34966 of 2000

Appellant : Jose

Respondent : State of Kerala

Advocate for Def. : C. Khalid and; N. Gopinatha Panicker, Advs. and; P.K. Sa

Advocate for Pet/Ap. : T. Ravikumar and; George Mecheril, Advs.

Disposition : Petition disposed of accordingly

Judgement :

G. Sivarajan, J.

1. Petitioners are accused Nos. 1 to 5 in Crime No. 215 of 2000 of the Sreekandapuram Police Station for offences Punishable under Ss. 143, 147, 148, 452, 324, 326, 427 read with S. 149 IPC under S. 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. According to the petitioners this crime case is registered as a counter case to Crime No. 214 of the same police station which is registered against respondents 4 to 7 on the basis of a complaint preferred by the first petitioner for offences under Ss. 341, 323, 324, 354, 506(1) r/w/ S. 34 IPC.

2. The 4th respondent, it is stated, had expected an agreement on 4.11.1998 with one Jameela, D/o Hamsa, Meethalakath, Nediyanaga and one M.M. Mathai, S/o Mathai, Nediyanaga for excavation and removal of granite boulders from the properties belonging to them for a total consideration of Rs. 1,50,000/- for a period of 5 years. It is stated that the said properties are situated very close to the residences of the petitioners, that respondents 4 to 7 started running a granite quarry without obtaining any licence under the Panchayat Raj Act, the Explosive Act, the Minor Metals and Minerals Excavation Act and the Rules issued under the said Acts, that respondents 4 to 7 did not obtain no objection certificate from the nereby residents and that they have started excavating boulders by using explosives which started causing serious damages, health problems, and nuisance to all the neighbouring properties and persons. It is stated that the people of the locality objected to the same, that the quarry has a depth of 35 metres, that on 15.8.2000 the father of the 3rd petitioner fell down in the said quarry and died at the spot, that a case Crime No. 149/2000 was registered by the 3rd respondent and that the matter is being enquired into by the police. It is also stated that the petitioners along with the people of the locality submitted a mass petition (Ext. P5) before the Circle Inspector of Police seeking to stop the functioning of the quarry completely as the same is functioning without any proper licence or without taking any protective measures. Since no action was initiated by the authorities on such representation they filed representation before the District Collector, Kannur on 18.9.2000 with a copy to the R.D.O., Thalassery. The copies of the said complaints it is stated, are given to the S.I. of Police, Kannur, Assistant

Director of Geology, Kannur, Pollution Control Board, Kannur and the Secretary, Sreekandapuram Grama Panchayat. The 4th respondent in the meantime approached the Munsiff's Court, Thaliparamba and Sub Court, Payyannur by filing a caveat O.P. on 18.9.2000 against petitioners 2 and 3 and others. Since the respondents did not take any action on the representation the 5th petitioner and 2 others filed O.P. No. 27824 of 2000 before this Court, that notice was ordered in the said O.P. and that the R.D.O., on receipt of the notice, immediately passed an order under S. 133(1) Cr. P.C. directing the 4th respondent and others to stop the quarrying of the granite boulders within 7 days from the date of receipt of his order dated 30.10.2000. Prior to the said the 3rd petitioner and his brothers had caused a lawyer's notice to be sent to the 4th respondent and the land owners of the quarry demanding an amount of Rs. 1,00,000/- for the damages caused to them due to the death of his father. It is alleged that even after the order passed by the R.D.O. respondents 4 to 7 without any regard to the same are conducting the quarrying operations, that the complaint in Ext. P1 is that these petitioners tried to prevent the work of loading of granite boulders from the quarry and that the petitioners had only brought this to the attention of the R.D.O. and had not done anything further. It is further alleged that respondents 4 to 7 for the purpose of preventing permanently any further action from the part of these petitioners had preferred complaint Ext. P1 including an offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act so that the petitioners will not be able to get bail easily. The petitioners in the above circumstances have filed this Original Petition seeking to quash Ext. P1 F.I.R. They have also sought for direction to respondents 1 to 3 to effectively prevent respondents 4 to 7 from carrying out the illegal quarrying operations disobeying the order of the R.D.O.

3. A counter affidavit is filed by respondents 4 to 7. It is stated that the Original Petition is not maintainable, that the first prayer in the O.P. is to quash Ext. P1 which is the F.I.R. in Crime No. 215 of 2000 of Sreekandapuram Police Station, that the writ jurisdiction of this Court under Article 226 of the [Constitution of India](#) cannot be invoked for quashing the F.I.R. in a criminal case, that Crl. M.C. No. 6340/2000 filed by the petitioners for quashing the very same F.I.R. was withdrawn by them and that this Writ Petition is liable to be dismissed on these grounds alone. It is also stated that the petitioners have suppressed material facts

and filed a false affidavit in the O.P. In the affidavit, the deponent has stated that he has not filed any petition as prayed for in the O.P. But he admitted in para. 5 of the O.P. that the petitioners have averred that the 5th petitioner and 2 others have filed O.P. No. 27824/2000 before this Court as the respondents were not taking any action on Ext. P5 petition. It is stated that the prayers in O.P. No. 27824/2000 and this O.P. are identical. They denied the averment that Crime No. 215/2000 was registered as a counter case to crime No. 214/2000. It is stated that the quarrying operations were going on in the plots belonging to one Jameela and Mathai with the permission of the authorities long before they undertook the work, that the quarry was leased out by its owners to one Sukumaran, Xavier and Devasya since 1995 and the petitioners had not raised any objections, that the 4th respondent was conducting the granite quarrying work on the basis of a valid lease from the owners believing in good faith, that the operation of the quarry was permitted by the authorities, and that the quarry site was bounded by a stone wall around and there is no public passage touching any boundary of the quarry. They have denied the averment that the respondents started running a granite quarry without obtaining licence from the Panchayat and without obtaining licence under the Explosives Act as also under the Minor Metals and Minerals Excavation Rules. They admitted that an old man named Chacko had fallen or jumped into the quarry on 15.8.2000. It is stated that his death was either accidental or suicidal. They have denied various averments contained in the O.P. They have also denied the averment that they are conducting the quarrying operations violating the order Ext. P7 passed by the R.D.O. and that loading granite from the quarry is different from excavating granite. It is stated that the offences alleged in Exts. P1 and P2 FIRs are under investigation by the police officials and that if the petitioners are aggrieved by Ext. P1 FIR lodged by the police against them, it is for them to agitate the matter before the appropriate criminal court and not under Article 226 of the [Constitution of India](#).

4. A statement is filed on behalf of the second respondent. It is stated that a complaint was received from respondents 4 to 7, that on 20.10.2000 at about 10 hours while respondents 4 to 7 who belong to Valluva Community (SC) were proceeding to the granite quarry for loading granite stone the petitioners who belong to Roman Catholic Community formed themselves into an unlawful

assembly armed with stick, iron rod, stone, etc. attacked the complainant and his brothers with stick and iron rod and inflicted fatal injuries to the complainant and insulted them by calling their caste name. The incident took place in front of the gate of the compound of the house of Malivakal Mathai which lies at Nediyanaga Chenchara panchayat road and that there were eye witnesses including the victim and accused persons. The petitioner went to the hospital along with other victims on 20.11.2000 and treated as O.P. at Pariyaram Medical College and returned to their houses on the same day passing through the road of Sreekandapuram Police Station and filed the complaint on 23.11.2000 after a delay of two days on knowing the hospitalisation of the complainant Suresh and his mother and brothers at Government Hospital, Taliparamba. There is no mentioning why the petitioner and his relatives have not approached Government Hospital, Taliparamba on 20.11.2000 and approached MCH, Pariyaram which is lying about 14 Kms. away from Government Hospital, Taliparamba. The quarry is lying at the paramba of one Malivekkal Mathai and he permitted the brother of the complainant for running granite quarry and the quarry is not functioning at present. It is also stated that the investigation in both the cases are being conducted by the 2nd respondent from 24.11.2000 onwards, that the case in crime No. 215/2000 is pending for arresting the accused persons, who are the petitioners in this O.P. and for obtaining plan of scene of crime and caste certificate. The case in crime No. 214/2000 is pending for obtaining wound certificate from the Medical College Hospital, Pariyaram and for questioning the Medical Officer. It is also stated that the accused persons are liable for offences under Ss. 143, 147, 148, 324, 326, 452, 427 r/w. 149 IPC and 3(1)(x) and 3(2)(v) of SC/ST (PA) Act, 1989.

5. The petitioners have filed a reply affidavit to the statement filed on behalf of the second respondent. It is stated that in Ext. P1 F.I.R. in Crime No. 215/2000 the offence under S. 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 was not included. However, the same was subsequently included only for the purpose of harassing the petitioners. Referring to the said provision, it is stated that the section is attracted only if the offence is committed by any person against a person because that person belongs of to a alleged offence has been committed only because respondents 4 to 7 were operating a quarry which has been directed to be closed down by the RDO as per Ext. P7

order and that the offence has not been committed because respondents 4 to 7 belong to Scheduled Caste or Scheduled Tribe. It is also stated that respondents 2 and 3 have got a duty to see that Ext. P7 order issued by the R.D.O. is strictly complied with and that respondents 4 to 7 do not operate the quarry which is causing imminent danger to the people of the locality.

6. Sri. T. Ravikumar, learned counsel for the petitioners of the basis of the pleadings submitted that the petitioners have not committed any offence as alleged in Ext. P1 F.I.R. and that respondents 4 to 7 happened to make the complaint only as a counter case to the complaint filed by the petitioners in Ext. P2 F.I.R. by alleging offence under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 with intend to create difficulties for the petitioners and to prevent them from getting any bail. He further submitted that the attempt of respondents 4 to 7 is to carry on the quarrying operations in violation of the order issued by the R.D.O. without any obstruction by the petitioners. He submitted that respondents have lodged Ext. P1 complaint mala fide an ulterior motive for wreaking vengeance and with a view to spite them due to private and personal grudge. The counsel submitted that though the power of quashing criminal proceedings will be exercised very sparingly and with circumspection this is one of those cases which squarely falls within the guidelines formulated by the Supreme Court in *State of Haryana v. Bhajan Lal* (AIR 1992 SC 604) which is followed by the Supreme Court in *Mahavir Prasad Gupta & Anr. v. State of National Capital Territory of Delhi* (AIR 2000 SC 3101). The counsel accordingly submitted that Ext. P1 FIR is liable to be quashed.

7. Learned counsel for respondents 4 to 7 on the other hand, submitted that the allegations in Ext. P1 F.I.R. clearly constitute the offences specified in the F.I.R. and that at an initial stage a court should not embark upon an enquiry as to whether the allegations in the complaint are likely to be established by evidence or not. The counsel also submitted that the petitioners herein had wilfully and with the intention of causing harm and damages to respondents 4 to 7 and beat them with iron rods causing serious injury, caused damages to the building and also used abusive words against them calling their caste name also. the counsel also submitted that the details contained in the F.I.R. clearly constitute the offence

specified in the F.I.R. itself.

8. The learned Government Pleader for respondents 1 to 3 on the basis of the statement filed by them submitted that the investigation is going on the Crime Nos. 214/2000, registered against respondents 4 to 7 and Crime No. 215/2000 registered against the petitioners, and that the submission of the final report is pending for certain matters. It is also stated that crime case No. 215/2000 is also pending finalisation since the respondents 4 to 7 who are accused in the said case could not be arrested so far.

9. As already stated, the petitioners seek to quash Ext. P1 F.I.R. in Crime Case No. 215/2000 lodged at the instance of petitioners. It is alleged in the said F.I.R. that the petitioners, due to enmity with respondents 4 to 7 in connection with the prohibitory order issued by the RDO, wilfully caused serious injuries to them with iron rods and also called their caste name and further caused damage to their properties. Prima facie and allegations contained in Ext. P1 F.I.R. would constitute offences mentioned in the said F.I.R. The contention of the petitioners is that they have not caused any injuries to respondents 4 to 7 and that the complaint is lodged maliciously with intend to cause difficulties to the petitioners. It is also their case that the offences under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 were also included only to see that the petitioners do not get any bail from the court. It is also their case that respondents 1 to 3 are not taking any steps to effectively prevent respondents 4 to 7 from carrying on the illegal quarrying operation disobeying the order Ext. P7 passed by the R.D.O.

10. The legal position with regard to the quashing of an FIR in proceedings under S. 482 or under Article 226 of the Constitution has been the subject matter of the various decisions of the Supreme Court. The Supreme Court in *State of Haryana v. Bhajan Lal* (AIR 1992 SC 604) after elaborate consideration of the provisions of the Code of Criminal Procedure under Chapter XIV and the principles laid down in a series of decisions of the Supreme Court relating to the exercise of extraordinary power under Article 226 or in the inherent powers under S. 482 Cr.P.C. gave the following categories of cases wherein such power could be exercised

either to prevent abuse of the process of the Court or otherwise to secure the ends of justice.

'(1) Where the allegations made in the first information report or the complaint even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S. 156(1) of the Code except under an order of a Magistrate within the purview of S. 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S. 115(2) of the Code.

(5) Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings are maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'

11. The Supreme Court in Mahavir Prasad Gupta v. State of National Capital Territory of Delhi (AIR 2000 SC 3101) held that the aforementioned decision apart from the above has also added a note of caution to the effect that the power of quashing a criminal proceeding should be exercised 'very sparingly and with circumspection and that too in the rarest of rare case'. The court then observed that one such should be when the complaint does not disclose any offence.

12. On the facts of the present case respondents 4 to 7 and admittedly been conducting a quarry near to the residences of the petitioners and the people of the locality including the petitioners have raised complaints against the same. It also happened that the father of the petitioner No. 3 fell into the quarry and died. The Revenue Divisional Officer, Thalassery had also passed an order under S. 133(1), Cr.P.C. on 30.10.2000 directing respondents 4 to 7 to stop the quarry of granites and to show cause why the said order should not be made absolute. It is also an admitted fact that even after the said order respondents 4 to 7 were bringing lorries to the quarry for removing the granite boulders. According to the petitioners respondents 4 to 7 were conducting quarrying operations even after the order passed by the RDO, but this is denied by the respondents. Whatever it may be, it is in connection with the quarrying operations and the order passed by the RDO directing respondents 4 to 7 to stop the quarrying operations, Ext. P1 F.I.R. at the instance of respondents 4 to 7 and Ext. P2 F.I.R. at the instance of the petitioners were lodged alleging offences under the provisions of the Indian Penal Code. Respondents 4 to 7, as they belong to Valluva community, which is a Scheduled Caste Community have also alleged that the petitioners have called the caste name of respondents 4 to 7 and also used abusive languages. According to the petitioners, Ext. P1 complaint is lodged by respondents 4 to 7 as a counter case only to the petitioners and to enable them to carry on the quarrying operations even in violation of the order passed by the RDO. Admittedly investigation in respect of both the F.I.R.s (Ext. P1 and P2) is going on. So far as Ext. P1 F.I.R. is concerned the stand of respondents 1 to 3 is that the investigation is not being proceeded with since the petitioners who are the accused in the said case have not been arrested.

13. As held by the Supreme Court in a series of decisions including the decision in Mahavir Prasad Gupta's case mentioned above the court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint in proceedings under S. 482 of the CrI.P.C. or under Article 226 of the [Constitution of India](#) and that the extraordinary or inherent powers did not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. It has also been held that the power of quashing criminal proceedings must be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The Supreme Court had also given the seven instance which I have already extracted earlier in which this Court can interfere and quash an F.I.R. I have gone through the allegations in Ext. P1 F.I.R. which would, prima facie, constitute the offences mentioned in the said F.I.R. According to the petitioners, Ext. P1 F.I.R. fall under category No. 7 extracted above. It is stated that Ext. P1 F.I.R. has been lodged by respondents 4 to 7 maliciously with a ulterior motive for wreaking vengeance on the accused and with a view to spite them due to private and personal grudge.

14. The facts already revealed and stated herein above of course disclose some private vengeance on both the parties. However, it will be too early to say that the allegations made in Ext. P1 F.I.R. is true or genuine. This is a matter for the investigating authority to consider elaborately while proceeding with the investigation pursuant to Exts. P1 and P2 F.I.R.s.

15. In these circumstances, I am of the view that it will not be fair or proper on the part of this Court to exercise the extra ordinary jurisdiction of the Court under Article 226 of the [Constitution of India](#) and to quash Ext. P1 F.I.R. The question as to whether the court can order stay of arrest during investigation was considered by a Full Bench of the Allahabad High Court in Satya Pal and Ors. v. State of U.P. (2000 (40) ACC 75) and held that the court can in appropriate cases, if the court is convinced that the power of arrest will be exercised wrongly or mala fide or in violation of S. 41(1)(a) of the Code of Criminal Procedure, writ of mandamus can be issued restraining the police from misusing its legal power. It was also observed that the power to order stay of arrest may be granted sparingly in the exceptional cases and with circumspection that too in rarest of rare cases keeping

in mind that any relief, interim or final, during investigation which has the tendency to slow or otherwise hamper the investigation should not be granted.

16. In this case the petitioners have alleged that the petitioners have been charged with offences under S. 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 mala fide and with intent to see that the petitioners do not get bail from the court. Respondents 1 to 3 also have stated that Crime No. 215/2000 registered on the basis of Ext. P1 FIR is not being proceeded with since the petitioners could not be arrested.

17. An interim order was passed in C.M.P. No.4827 of 2001 on 7.2.2001 directing the 3rd respondent not to harass the petitioners and the petitioners were also directed to appear before the 3rd respondent as and when required for the purpose of investigation. According to me, in view of the peculiar circumstances of this case discussed in the preceding paragraphs I am of the view that this is a fit case for issuing direction to respondents 1 to 3 not to arrest the petitioners or to harass them during the investigation. However, the petitioners will appear before the 3rd respondent or before any other investigating officer as and when required by them for the purpose of conducting crime case Nos. 214/2000 & 215/2000 of Sreekandapuram Police Station. The investigating officer will also conduct the investigation further keeping in view of the aforesaid facts and circumstance, complete the investigation and submit the final report before the concerned court without further delay.

18. It is for the petitioners, if they are aggrieved by the alleged violation of Ext. P7 order and for the respondents if they are aggrieved by Ext. P7 order to approach the RDO, Thalassery for appropriate relief.

19. The Original Petition is disposed of with the above directions.