

Prasad Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/730253

Court : Kerala

Decided On : Nov-21-2002

Reported in : 2003(1)ALT(Cri)286; 2003(1)KLT255

Judge : N. Krishnan Nair, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 177, 462 and 482

Appeal No. : Crl. M.C. Nos. 8100 and 8263 of 2002

Appellant : Prasad

Respondent : State of Kerala

Advocate for Def. : Manjeri Sunder Raj,; P.V. Kunhikrishnan and; K.P. Dandap

Advocate for Pet/Ap. : P. Gopalakrishnan Nair and; P.A. Ahmed, Advs.

Disposition : Petitions dismissed

Judgement :

ORDER

N. Krishnan Nair, J.

1. These petitions are filed under Section 482 of the Code of Criminal Procedure for quashing the complaint in C.C. No. 85/02 on the file of the Chief Judicial Magistrate, Kozhikode. The 1st accused in C.C. No. 85/02 is the petitioner in Crl.

M.C. No. 8263/02 while accused Nos. 2 to 5 are the petitioners in Crl. M.C. No. 8100/02. The case arose on a complaint filed by Shri. M.T. Vasudevan Nair against the accused alleging the commission of the offences punishable under Sections 499 and 500 read with Section 34 of Indian Penal Code. The allegation is that Shri M.V. Devan, the 1st accused made some defamatory statements about Shri. M.T. Vasudevan Nair (the complainant) regarding a Malayalam Novel 'Varanasi' written by him. The defamatory statements said to have been made by the 1st accused were published in Malayala Manorama daily dated 1.6.2002 and also in Mathrubhumi daily. The further allegation is that the complainant received information that the above defamatory statements were published in Kala Kaumudi Daily Edition, Mumbai on 12.5.2002. The first accused is alleged to have made statement to give an impression to the public that right from the beginning the complainant is a Plagiarist bereft of originality.

2. After recording the sworn statement of the complainant and perusing the records, the Chief Judicial Magistrate took cognizance of the offence under Sections 499 and 500 read with Section 34 of the I.P.C. Shri. M.V. Devan, in obedience to the summons appeared before the court and he was released on bail. Accused 2 to 5 did not appear in person, but entered appearance through their counsel. Alleging that the complaint is a sheer abuse of the process of the court and the Chief Judicial Magistrate has no territorial jurisdiction to entertain the complaint, the accused have come up with these petitions.

3. The learned counsel for the petitioners strongly contended that the lower court should not have taken cognizance of the offences since the allegations in the complaint do not disclose the commission of the offences. They further contended that the court below has no territorial jurisdiction to entertain the complaint since there was no publication of the defamatory statements within the jurisdiction of the Chief Judicial Magistrate, Kozhikode. On the other hand the learned counsel for the respondent strongly contended that the order of the lower court taking cognizance of the offence is clearly sustainable and the complaint is not liable to be quashed under Section 482 of the Crl. P.C.

4. The question for consideration is whether Annexure-A complaint is liable to be quashed in the exercise of jurisdiction under Section 482 of the Code. It is settled by the decisions of the Supreme Court that where the allegations made in the complaint taken at their face value do not make out a case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused, the order of the Magistrate issuing the process against the accused can be quashed exercising the jurisdiction under Section 482 of the Cr. P.C. Keeping in mind the above principle of law, I have anxiously and carefully scanned through Annexure-A complaint. But on going through the complaint, I am unable to say that the uncontroverted allegations in the complaint do not prima facie establish the commission of the offences.

5. Then the question for consideration is whether the Chief Judicial Magistrate, Kozhikode has territorial jurisdiction to entertain the complaint. According to the petitioners, the alleged defamatory statement was printed and published in Kalakaumudi Week End edn. dated 2.5.2002 at Mumbai and there is no circulation of Kalakaumudi Week End edition within the State of Kerala. It is pointed out that there is no averment in the complaint to the effect that the Week End edition containing the alleged defamatory statement was published by the petitioners within the State of Kerala. At the outset I must say this contention of the petitioners is untenable because the power of a Judicial First Class Magistrate to take cognizance of an offence is not impaired by territorial restrictions. In this connection it is relevant to note the following observations of the Supreme Court reported in *Trisuns Chemical Industry v. Rajesh Agarwal* (A.I.R. 1999 S.C. 3499):

'The jurisdictional aspect becomes relevant only when the question of enquiry or trial arises. It is therefore a fallacious thinking that, only a magistrate having jurisdiction to try the case has the power to take cognizance of the offence. If he is a Magistrate of the First Class his power to take cognizance of the offence is not impaired by territorial restrictions. After taking cognizance he may have to decide as to the court which has jurisdiction to enquire into or try the offence and that situation would reach only during the post cognizance stage and not earlier.'

6. In this case, there is no dispute that Kalakaumudi is published from Mumbai. But it cannot be said that it is read only in Mumbai. According to me, the contention of the learned counsel for the petitioners that the place where Kalakaumudi was published and circulated would only have a jurisdiction to entertain the complaint, is not at all tenable. It is advantageous to refer to the following observations of this Court reported in *Narayana Pillai and Ors. v. Chacko* (1986 KLT 1005):

'One of the contentions of the petitioners is that the Magistrate acted illegally in taking cognizance of the offence when he had no territorial jurisdiction to entertain the complaint. That contention does not appear to be correct. It is true that the Kalakaumudi Weekly is printed and published from Trivandrum. But in order to maintain a prosecution for defamation in a particular court there need only be publication of the libel within the jurisdiction of the court where the complaint is filed. Jurisdiction has to be decided on the basis of the allegations in the complaint for the purpose of a proceeding under Section 482. The very allegation of the 1st respondent in the complaint is that it was published at Vaikom also and it was from there that he got and read a copy of it. Being a Weekly publication intended to be read by people, it is enough for the complainant to show that the publication was delivered within the limits of the territorial jurisdiction of the court in order to invest that court with jurisdiction. It need not be shown that the defamatory matter was seen or read by any particular person within the jurisdiction of that court. Since the Weekly is being printed and published for the purpose of reading by the people when it is shown that it was published it could be presumed that it was read.'

7. The decision in *Narayana Pillai v. Chacko* (1986 KLT 1005) was followed by Gauhati High Court in *Dilip Kr. Hazarika v. Nalin Ch. Buragohain* (2002 CrI. L.J. 1608). I am in respectful agreement with the views expressed by the learned judges in the decisions referred to above.

8. The learned counsel for the petitioners further contended that registration was given to Kalakaumudi on condition that it shall not be published or circulated anywhere in the State of Kerala and therefore it cannot be said that the defamatory statement was published within the State of Kerala. I cannot agree.

What is published anywhere is obviously expected to be read. The petitioners cannot have a case that Kalakaumudi Week End shall not or cannot be read anywhere else in India outside Mumbai.

9. I cannot also agree with the learned counsel for the petitioners that there is no specific averment in the complaint with regard to the publication of Kalakaumudi in Kerala State. The relevant portion in para 15 of the complaint reads as follows:

'The offences have been committed by the accused with its impact and consequences ensuing at various places as also at Calicut city wherein the defamatory imputations published and circulated amongst the public causing them to be read by them within the jurisdiction of this Hon'ble Court, where the complainant and his works are well known and where at people hitherto appreciating both have started frowning at and avoiding him and his works.'

10. In this connection it is also relevant to note that Section 462 of the Cr. P.C. cures irregular proceedings held in a wrong area unless failure of justice has been occasioned. No doubt as per Section 177 of the Cr. P.C. every offence shall be enquired into or tried by a court within whose local jurisdiction it was committed. But the rule laid down in Section 177 of the Cr. P.C. does not go to the root of the matter and does not make the trial of an accused by a court having no territorial jurisdiction a nullity. (See Raj Kumari v. Dev Raj, A.I.R. 1977 S.C. 1101). For the reasons stated above I am of the view that quashing of a complaint on the ground that the Magistrate has no territorial jurisdiction to take cognizance of the offence and issue process is improper and bad in law.

11. The power under Section 482 of the Code is extraordinary and it can be exercised only in exceptional cases. I am not confident enough to include this case in the category of exceptional cases. In the result both the petitions are dismissed.