

Ummer Vs. State of Kerala

Ummer Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/903238

Court : Kerala

Decided On : Feb-23-2010

Reported in : 2010(1)KLT963

Judge : V. Ramkumar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 173(8); ;Indian Penal Code (IPC) - Sections 306 and 498A

Appeal No. : Cri.R.P. No. 3299 of 2009

Appellant : Ummer

Respondent : State of Kerala

Advocate for Def. : P.K. Muhammed,; C.N. Ibrahim, Advs. and; P.A. Salim,

Advocate for Pet/Ap. : Dhanya P. Ashokan and; Sojan Michael, Advs.

Judgement :

ORDER

V. Ramkumar, J.

1. The revision petitioner is the sole accused in S.C. No. 36 of 2009 on the file of the Addl. Sessions Court, Adhoc-II, Kasaragod. The revision petitioner married one Haseena on 13.11.2005 and a child also was born in that wedlock. The dead

body of his wife Haseena, aged 22 years was found floating at about 4 p.m. on 9.8.2008 in the Chandragiri river, far away from her matrimonial home where she was staying at that time. According to the version of the inmates of the house of the accused, on the previous day (8.8.2008) at about 7 p.m. while Haseena and the accused were about to go to the house of Haseena, a quarrel took place between the spouses over a trivial issue and Haseena ran inside the house and cut her vein and was thereafter missing. According to the father and other close relatives of Haseena, when they reached the house of the accused after getting the news about her disappearance, they had seen blood stains in the bedroom as well as on the dress of the accused and his mother. At 10 a.m. on 9.8.2008 the Kasaragod Police registered a case as Crime No. 560 of 2008 for offences punishable under Sections 498A and 306 I.P.C. The investigation was conducted by the Dy.S.P., Kasaragod who charge-sheeted the revision petitioner/accused for the aforementioned offences on 7.10.2008. The learned Magistrate concerned, after initiating committal proceedings finally committed the case to the Court of Session on 12.12.2008. The case was made over to the Addl. Sessions Court (Adhoc-II), Kasaragod for trial. After taking cognizance of the offence, the Addl. Sessions Judge issued process and the case was posted for the appearance of the revision petitioner/accused to 28.7.2009. On that day, C.W.2 the father of deceased Haseena filed an application under Section 173(8) Cr.P.C. for further investigation alleging that the investigation so far conducted was not satisfactory and that even though the victim had cut injuries on her body and the accused and his family members had assaulted the victim, the police reached a conclusion that this was a case of suicide without any supporting material. Thereupon, the court below, after perusing the records and hearing the Public Prosecutor passed the impugned order dated 16.9.2009 directing further investigation preferably by an efficient and sincere officer to be chosen by the Superintendent of Police, Kasaragod. It is the said order which is assailed in this Revision by the accused.

2. The learned Counsel appearing for the revision petitioner/accused made the following submissions before me in support of the Revision.

Since the Court below passed the impugned order after cognizance was taken and after the accused had entered appearance, he should have been heard in the

matter. The observation by the court below that there is nothing on record to rule out the possibility of murder would indicate the prejudiced mind of the learned Addl. Sessions Judge who was virtually accepting the contentions of the father of the deceased and the Public Prosecutor. In *Reeta Nag v. State of West Bengal and Ors.* : (2009) 9 SCC 129, the Apex Court has held that re-investigation or further investigation under Section 173(8) Cr.P.C. at the behest of the de facto complainant after the framing of court charge against one of the accused, the other accused having been discharged, was not proper. In *Kishan Lal v. Dharmendra Bafna* : AIR 2009 SC 2932 the Apex Court criticized the order passed for further investigation under Section 173(8) Cr.P.C without indicating in what respect the earlier investigation had not been carried out and what were the hidden truth which were required to be unearthed. When the investigation was conducted by no less an officer than the Dy.S.P. of Kasaragod, there was nothing to suspect the fair and impartial investigation conducted by him and this was a clear case of suicide and the only offences, if any, which can be made out are those punishable under Sections 498A and 306 I.P.C.

3. I am afraid that I cannot agree with the above submissions. The accused has no right to be heard in the matter of investigation or further investigation. See *Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj v. State of Andhra Pradesh and Ors.* : AIR 1999 SC 2332. It is not permissible for the accused to cull out a portion of the order of the Addl. Sessions Judge to contend that the learned Judge was prejudiced in favour of the prosecution. The fact remains that even without questioning the doctor who conducted the autopsy over the dead body of deceased Haseena the investigating officer had chosen to come to the conclusion that it was a clear case of suicide. The Court below has also highlighted the other circumstances indicating failure or inertia on the part of the earlier investigating officer in not throwing light on the circumstances mentioned therein. The failure to question important witnesses including the mother of the accused has also been highlighted by the court below. Except the inmates of the house of the accused there was nobody who could throw some light as to how the deceased sustained a cut injury to her vein on the left forearm. There were two superficial cuts 1.5 cm. each close to each other on the outer aspect of the tendons extending horizontally towards the inner aspect of the wrist. No

investigation worth its name was conducted as to how these ante mortem injuries were sustained by the deceased. Hence, I do not find any illegality in the impugned order passed by the Court below. Further investigation has been ordered mainly to consider whether the earlier investigating officer had explored the case from all angles and had ruled out the possibility of homicide.

4. The decision in Reeta Nag's case (supra) is clearly distinguishable since that was a case where further investigation was ordered after the Magistrate framed the charge against six accused and discharged the remaining 10 accused. Similarly, in Kishan Lal's case (supra) the criticism was that the order for further investigation was passed without indicating that the investigation already conducted was defective. Such a criticism cannot be levelled against the impugned order since it has exposed the gray areas of the earlier investigation including the non-examination of the autopsy surgeon and other witnesses by the investigating officer.

5. It is only since the request for further investigation came from the side of the victim that the Court was obliged to give reasons for further investigation. Had the motion come from the investigating officer or the Public Prosecutor, then there was no question of their obtaining the permission of the Court or the Court granting permission since further investigation is also a matter within the prerogative of the Police and the Judge imposed duty of formally seeking the permission of the Court is really to inform the Court that further investigation is afoot so that the Court may hold up the proceedings before it. See Rama Lal Narang v. State (Delhi Administration) : AIR 1979 SC 1791 and : AIR 1999 SC 2332 (supra). I do not find any illegality in the order for further investigation. The court below shall stay further proceedings till the supplementary final report is filed. I am sure that the court below shall not have any sort of prejudice or negative bias while taking up the case for consideration after receipt of the supplementary final report. This Revision is accordingly dismissed.

Dated this the 23rd day of February, 2010.