

Prasad Vs. State of Kerala, Represented by Public Prosecutor High Court of Kerala, Ernakulam and Another

Prasad Vs. State of Kerala, Represented by Public Prosecutor High Court of Kerala, Ernakulam and Another

SooperKanoon Citation : sooperkanoon.com/946920

Court : Kerala

Decided On : Jan-04-2012

Judge : N.K. Balakrishnan

Appeal No. : CRMC.No.3469 of 2011 (E)

Appellant : Prasad

Respondent : State of Kerala, Represented by Public Prosecutor High Court of Kerala, Ernakulam and Another

Judgement :

1. The petitioner is the first accused in S.T. No:155/2011 of Judicial First Class Magistrate Court-I, Kottayam. The offence alleged against him and the co-accused is under section 277 r/w 34 IPC.

2. The gist of the prosecution case is that on 14.12.2010 at about midnight, the first accused loaded toilet waste in lorry No:KL-4-D-7796, he and the second accused took the same to a place called 'Thonikadavu', situated in Manganam - Kalathiparambu road and dumped the latrine waste/human excreta into the 'thodu' underneath the bridge and polluted the water and thus the petitioner and other accused committed offence under Section 277 r/w 34 IPC.

3. A crime was registered based on the statement given by the 2nd respondent. After conducting investigation charge sheet was laid against the petitioner and other accused for the offence as mentioned above.

4. The learned counsel for the petitioner vehemently argues that the materials collected and mentioned in the final report, do not make out a case under section 277 of IPC. To attract section 277 it has to be proved that the accused corrupted or fouled the water of any public spring or reservoir so as to render it less fit for the purpose for which it is originally used. The argument that has been advanced by the learned counsel is that the 'thodu' underneath the bridge has not been described as public spring or reservoir. The line of argument is that, as it is described as a 'thodu' it cannot be a reservoir, but the water is to flow from one direction to another.

5. The other argument is that there is no specific case as to the purpose for which originally the water of that 'thodu' is used. It requires no further elucidation as to the magnitude of the fouling effect when the latrine waste is dumped into the 'thodu'. Even if it is assumed that the water of that 'thodu' was not actually used for drinking purpose it can be reasonably inferred that the said water would become unfit for taking bath or for washing or for such similar purpose, even if it was not used for drinking purpose.

6. When there is specific allegation that the accused carried such toilet waste to the bridge and from there it was dumped into the 'thodu', then it cannot be contended that the act of the accused was not intended to corrupt or foul the water. The contention that Section 277 would apply only to still or stagnant water and not to flowing water also cannot be accepted at this stage, in a petition filed under section 482 of Cr.P.C. In the 'thodu' itself there would be spring; whether it was a flowing one or not is a matter to be considered at the trial, the learned Prosecutor submits.

7. The other question that has been canvassed by the learned counsel for the petitioner is that there is no material to show that the 'thodu' is a public 'thodu'. The case of the prosecution is that the 'thodu' lies underneath the bridge, which is a public bridge, and as it is described as 'thodu' it must certainly be a public 'thodu'.

especially because it is beneath a bridge described as 'Thonikadavu Bridge.' The description of the bridge and the 'thodu' is sufficient to hold that it is a public 'thodu'. The fact that by dumping such waste material the water must have been rendered less fit for the purpose for which it was used cannot be disputed at all.

8. It was also argued at length by Sri. Revikrishnan, learned counsel appearing for the petitioner, that in view of the provision contained in Water (Prevention and Control of Pollution) Act, 1974, (for short - Water Act), the provisions contained in Section 277 IPC must be deemed to have been repealed. According to the learned counsel the offence relating to pollution of water is comprehensively dealt with by the Water Act.

9. Section 24 of that Act deals with the prohibition on use of stream or well for disposal of polluting matter, etc. Section 43 is the penal provision dealing with the same. Under section 49 of the Act, cognizance of offences under that Act, except on compliance or satisfaction of the pre-requisites stipulated therein, is barred. According to the learned counsel, section 60 of the Water Act, has overriding effect over other enactments. Therefore, the argument is that since there is a more comprehensive enactment - Water Act - which deals with pollution of streams, rivers etc, the provisions contained in that Act must have precedence and overriding effect on the provisions contained in Indian Penal Code. Since it is a special enactment, it has to be assumed that there is repeal by implication of Section 277 of IPC, the learned counsel submits.

10. Section 49(1) of the Water Act reads:

"No Court shall take cognizance of any offence under this Act except on a complaint made by, or with the previous sanction in writing of the State Board and no Court inferior to that of Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under sanction in writing of the State Board and no Court inferior to that of Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under this Act."

11. Section 60 of the Water Act contains the non obstante clause with reads thus:

“The provisions of this Act, shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act”

12. According to the learned Public Prosecutor, Sri. Rajesh Vijayan, section 277 has its operation or application in a different field whereas the Water Act is intended to prevent the factory effluents and other noxious substances being dumped or discharged into the river, streams etc.

13. Sri. Ravikrishnan, the learned counsel for the petitioner would submit that when the special enactment comprehensively deals with the matter by express provision prohibiting cognizance of the offence under that Act, except on satisfaction of certain conditions, the same cannot be ignored by resorting to section 277 of IPC. There is nothing in the Water Act, to hold that section 277 of IPC stood repealed. The fact that the provisions contained in the Water Act deals with pollution, both of public and private streams, wells etc, is no reason to hold that there is an implied repealing of Section 277.

14. The learned Public Prosecutor submits that there is nothing in the Water Act to assume that the said Special Act is intended to exclude the general altogether in as much as the two Acts operate in two different fields. As such the contention that the provisions contained in the Water Act take away the effect of section 277 cannot readily be assumed especially when there is nothing in the Water Act to hold that the provisions therein are intended to nullify section 277 from the Penal Code.

15. The argument that the non obstante clause in Section 60 has the effect of repealing section 277 of IPC also is unsustainable. The non obstante clause in Section 60 cannot be assumed to supersede or extinguish such provisions in the General Law. If the non obstante clause in Section 60 was intended to exclude or nullify section 277 of IPC, then there would have been strong indication available in the specific provision itself.

16. The decision of Madhya Pradesh High Court in Babulal V. Shri Aditya Birla and Another 1986 (1) Crimes 249 has to be distinguished on facts. That was a case where the Company had its Chemical and Industrial Complex at Birlagram; it was

stated to be consuming large quantity of water and the waste was found to be acidic and was emitting odour. The allegation was that the said waste water was not treated before its disposal in the near by 'Kuchha Nala'. There was also allegation that water became stagnant and polluted the water sources of the area including the springs and reservoirs and it was injurious to the health and well-being of the inhabitants of the area. The facts dealt with in this case are entirely different.

17. The wording of Section 60 is not intended to exclude section 277 of IPC. The intention to repeal the prior/existing law is not expressed in section 60 of the Act. According to me the intention is that notwithstanding the fact that the act complained of would attract section 277 of IPC, the prosecution can also be launched under the provisions of the Water Act. In other words, the cognizance of the offence under section 277 of IPC is not excluded or expressly taken away by the provisions of the Water Act.

18. It cannot be readily assumed that a non obstante clause supersedes or extinguishes other existing rights. Strong indications must be available in the specific provisions. The scheme of the Act must be such as to infer such supersession or implied repeal. It is argued by Sri. Rajesh Vijayan, the learned Public Prosecutor that, Section 24(1) of Water Act prohibits the causing or permitting any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter into any stream or well or sewer or on land. No doubt, it does not make any difference whether it is a public stream or a private stream, well or sewer etc. For the purpose of Section 277 IPC, it is sufficient, if a person voluntarily corrupts or fouls the water to render it less fit for the purpose for which it is ordinarily used. It need not be for drinking purpose alone. If a water was ordinarily used for other purposes also, the offences would be attracted if it was rendered less fit for the purposes for which it was ordinarily used. It is not necessary to prove the specific standard of the polluting matter nor does it require to prove, what was the standard of the water which was available before it was corrupted or fouled. If the offending act does not come within the purview of the provocation of the Water Act, it cannot be said that in view of the non obstante clause contained in Section 60 of the Act,

Section 277 IPC stood over ridden or rendered nugatory.

19. The question whether the offending act mentioned in this case would also attract an offence under section 49 of the Water Act is not germane for consideration. In this case the crucial question is whether the act of the accused would attract the offence under section 277 IPC. Sufficient material has been placed by the prosecution to put the accused to trial. So long as there is no express exclusion or repealing of section 277 of IPC, the argument to the contrary advanced by the learned counsel for the petitioner cannot be sustained.

20. It was also argued by the learned counsel for the petitioner that there is inconsistency in the place where the waste materials were alleged to have been dumped. There is not much inconsistency in it. The scene mahazar would show the place where the toilet wastes were dumped. That actually is part of the 'thodu', which by the very description is to be treated as a public 'thodu'. So much so, the contention that the alleged act of the accused does not attract section 277 of IPC cannot be sustained at all. It is made clear that aforesaid observations are made only for the disposal of this petition filed under section 482 of Cr.P.C. The learned Magistrate will dispose of this case uninfluenced by any of those observations.

In the result this petition is dismissed.

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