

Anil Kumar Vs. State of Kerala Represented by Public Prosecutor and Others

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Court : Kerala

Decided On : Feb-27-2012

Judge : P. Bhavadasan

Appeal No. : Crl.Rev.Pet.No. 3003 of 2011 (A)

Appellant : Anil Kumar

Respondent : State of Kerala Represented by Public Prosecutor and Others

Judgement :

P. Bhavadasan, J.

1. Under challenge is the order dated 8.8.2011 in Crl.M.P. No.4482 of 2008 before the Judicial First Class Magistrate, Adoor, whereby the court below dismissed a private complaint under Section 203 Cr.P.C.

2. The private complaint was laid against two police officers. At the relevant time, the accused were Head Constable and Sub Inspector of Police, Panthalam respectively. On the basis of the first information statement given by the complainant, the first accused registered Crime No.498 of 2006. FIS was laid before the court and the court numbered it as C.C. No.1042 of 2006. The second accused had conducted the investigation, completed the same and laid charge before court.

3. The information which led to the registration of Crime No. 498 of 2006 given by the complainant was in respect of an incident that took place on 7.11.2006 at about 8 a.m. when the complainant was returning home, one Rajan, his son Kuttan and one Saji assaulted the complainant with a broken brick. As a result of the assault he lost three teeth and his nose was bitten and injured. Further allegation is that he was thereafter kicked by the assailants. Immediately he had to be removed to the hospital. First accused is said to have taken the first information statement from the hospital. It was read over to the complainant through another person and he signed the same. However, when the complainant saw the FIS and FIR from the court and the final report therein, to his dismay he found that his statement has been substituted by a statement with his forged signature. Both the accused were fully aware of the replacement of the statement and both had conspired along with the assailants to do the same. By the FIS a totally different picture of the incident was placed before court and also that one of the accused stood deleted from the final report though he had been named at the time of giving first information statement. It is alleged that without conducting a proper investigation, and recording the proper statements of witnesses, and making sure that the witnesses cited will speak in favour of the accused when examined in court, the second accused had submitted the final report. Though initially the FIR was for offences punishable under Sections 324, 325 and 326 read with Section 34 IPC, consciously the 1st accused and 2nd accused made sure that Section 326 is deleted and substituted it with Section 325 and the accused were given bail from the police station itself. Further Crime No.499 of 2006 was registered against the complainant which was taken on file as C.C.1036 of 2006 with false allegations. The accused in the private complaint connived and conspired together to ensure the acquittal of the accused in C.C.1042 of 2006 thereby shirking from their official duty creating false, forged and fabricated records and therefore proceedings may be taken against the accused for appropriate offences.

4. After taking cognizance of the complaint and following the procedures under Section 202 Cr.P.C., initially the lower court dismissed the complaint by order dated 18.2.2009. The revision petition filed before the Sessions Court was also dismissed. That was challenged in Crl.M.C. 4270 of 2010 before this court. By order dated 16.6.2011 this court allowed the Crl.M.C. and directed the court below

to consider the matter afresh and in accordance with law.

5. Thereafter the matter was taken up again by the lower court and the court again dismissed the same holding that the offence alleged are under Sections 120B, 193, 196 and 201 read with Section 34 IPC and as far as offences under Sections 120B, 193 and 196 are concerned, the procedure under Section 195 Cr.P.C. has to be followed. As regards the offence under Section 201 is concerned, the finding is that there are no materials to come to the conclusion that such an offence has been made out. Accordingly the complaint was dismissed by the court below.

6. Learned counsel appearing for the revision petitioner very fairly conceded that it is quite true that in the complaint offences alleged are 120B, 193, 196 and 201 read with Section 34 IPC. It was also conceded that the offences under Sections 193, 196 and 120B IPC in the circumstances of the case fall within the ambit of Section 195(b) (i) and (iii) and therefore not cognizable except on a complaint made in accordance with Section 195 Cr.P.C. However, learned counsel contended that the court is not confined to the offence made mention of in the complaint, but it is the obligation and duty of the court to find out whether any offence under any of the provisions of law are made out on the basis of the allegations in the complaint. Merely because a wrong provision is quoted in the complaint, or merely because some other offences are made out on the allegation than the one stated in the complaint are not by themselves sufficient to dismiss the complaint. Learned counsel went on to point out that the material alteration and forgery of the documents were done outside the court and therefore the court below ought to have taken note of the appropriate penal provision and also found that since forgery and fabrication was done outside the court Section 195 (1)(b)(ii) may not be a bar at all. According to the learned counsel, the court below has not discharged its functions and has stood by technicalities resulting in miscarriage of justice.

7. Learned Public Prosecutor on the other hand pointed out that on the basis of the allegations and the offences made mention of in the complaint, the learned Magistrate was justified in dismissing the complaint.

8. The question that arises for consideration is whether the duty of the court is confined to find out or ascertain whether the offences made mention of in the complaint alone are made out, or if not, can the court simply dismiss the complaint? Or in other words, whether the court is confined to the offences made mention of in the complaint, even if on the allegations and the materials before it, it is clear that other penal provisions are attracted. The question arises is whether merely because a wrong penal provision is quoted, is it a ground for the court to dismiss the complaint? Cannot the court consider the relevant materials before it and come to the conclusion that even though the offences made mention of in the complaint are not made out or cannot be taken cognizance of, and some other penal provisions are attracted constituting offences and on that basis, proceed with the complaint? Even assuming that no penal provision as such is mentioned in the complaint, can the court dismiss the complaint?

9. For the purpose of determining the above issues, it becomes necessary to consider the definition of 'complaint' and 'offence'. Section 3(d) of Cr.P.C. defines 'complaint' as follows:

"(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

Section 3(n) defines 'offence' as follows:

"(n) "offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 (1 of 1871)."

Going by the definition of 'complaint', the essential ingredients of a complaint are (i) it must be made to a Magistrate, (ii) it may either be oral or in writing, (iii) it must be made with a view to take action under the Code, (iv) it must contain an allegation that some persons, who are known or unknown have committed an offence and (v) it does not include the report of a police officer. Therefore the complaint must include an allegation, either made orally or in writing, with a view that the Magistrate may take action under law against the person against whom

the allegation is made that he has committed an offence. The definition of offence shows that it means (i) any act or omission (ii) punishable by the law for the time being in force. Therefore, if allegations are made orally or in writing disclosing an act or omission punishable under law for the time being in force and satisfies the ingredients of a complaint, then the mere fact that a wrong provision is mentioned will not be sufficient to dismiss the complaint.

10. It must be remembered that it is not obligatory on the part of the complainant to specify the offence which according to him has been committed by the accused in his complaint. If as a matter of fact in the complaint in the present case, the complainant had not mentioned the offences as taken note of by the lower court, that could not be a ground to dismiss the complaint.

11. On a reading of the definition of the 'complaint' and 'offence', it becomes clear that all that is necessary is to allege either orally or in writing that the accused, be he known or unknown, has committed an act punishable under law. Once the ingredients of these two definitions are satisfied, then it becomes the duty of the court to find out what actually are the offences alleged to have been committed by the accused persons.

12. It may not be inappropriate here to refer to the decision reported in *Bhimappa v. Laxman* (AIR 1970 SC 1153) wherein the question as to what constitutes a complaint was considered. In paragraph 11 of the judgment it was observed as follows:

"The word 'complaint' has a wide meaning since it includes even an oral allegation. It may, therefore, be assumed that no form is prescribed which the complaint must take. It may only be said that there must be an allegation which prima facie discloses the commission of an offence with the necessary facts for the Magistrate to take action. Section 190(1)(a) makes it necessary that the alleged facts must disclose the commission of an offence."

13. The issue as to whether non-mentioning or mis-description of a section or penal provision made mention of in the complaint is sufficient to throw out the complaint or dismiss the same was considered in the decision reported in

Kunhiraman v. State of Kerala (1988(2) K.L.T. 622), wherein it was held as follows:

"It is not the number of the Section mentioned in the complaint which is to be looked into. The material facts which are averred in the complaint are to be looked into for finding out whether an offence under the Indian Penal Code is made out. The complaint is to contain allegations constituting the offence. The mis-description of the Section will not make the complaint anything other than the complaint as defined in the Code of Criminal Procedure. Mis-description of the Section of the IPC with reference to the offence made out by the facts alleged does not in any way go to vitiate the complaint. The court is to look into the averments made by the complainant and not on the description of the Section of the Penal Code. When a complaint has been made to the court, the court is free to frame any charge on the basis of the facts alleged therein. It is the allegations of facts which constitute the complaint. Since it is the allegation of facts which constitute the complaint the mis-description of the specific sections relating to the offences made of the facts alleged is not an essential ingredient of a complaint. The non-mention of the Section cannot be taken as a defect in the complaint entitling the accused to get a discharge."

14. Borrowing the principles in the above decisions, it follows that even if a wrong penal provision is shown in the complaint or even if no penal provision as such is mentioned in the complaint, that may not be a ground to dismiss the complaint.

15. In the case on hand, merely because Sections 193, 196 and 120B are stated and prosecution for those offences, going by the facts of the case, can be only by following the procedures under Section 195 Cr.P.C., it does not mean that the court is precluded from the allegations and materials before it from finding out whether any other offences are made out.

16. The allegations in the present complaint is not confined to the provision relating to administration of justice. There are clear allegations of forgery and attempt to use forged deed as a genuine document, which attracts Sections 465 and 471 IPC. If as a matter of fact the averments in the complaint and the materials collected in the enquiry under Sections 202 and 200 Cr.P.C. disclose

commission of any other offences, then the complaint may be maintainable. In such cases, Section 195(b)(ii) Cr.P.C. may not have any application as those offences may not fall within the ambit of the said provision.

17. The allegations in the complaint in the case on hand are indeed serious. The court below ought not to have taken the matter so lightly especially when this court on an earlier occasion set aside the order and directed the court to reconsider the matter afresh. It will be only appropriate to refer to the earlier order of this court wherein it is observed as follows:

"The non-application of mind by the learned Magistrate as well as learned Sessions Judge is evidently manifest from the orders impugned. At this stage, I am not proposed to enter into any findings regarding the merit or demerits of the case put forward either by the petitioner as the same is likely to affect either of the parties or the respondents, especially, the manner in which I propose to dispose of this revision petition. But I have no hesitation to hold that on further consideration if it is found that in the allegation there are sufficient ground to proceed further, as the accused are belong to Police Department, it is for the Magistrate to consider to take proper steps, after having regard to the facts and circumstances involved in this case."

18. In spite of the observation so made by this court on the previous occasion, the lower court has made a casual approach and has failed in discharging its duty. It would appear that the court was finding out some reason or other to get rid of the complaint. It had to exercise its jurisdiction to meet the ends of justice. One can only say that the present order is unfortunate and passed as on the previous occasion without application of mind.

In the result, this revision petition is allowed, the impugned order is set aside and the court below is directed to reconsider the question afresh in accordance with what has been stated above and untrammelled by any of the observations made by this court while disposing of this revision petition. The respondents before this court will be entitled to present their contentions if they are entitled in law to do so.