

P.V. Chacko Vs. State of Kerala, Represented by the Public Prosecutor and Another

P.V. Chacko Vs. State of Kerala, Represented by the Public Prosecutor and Another

SooperKanoon Citation : sooperkanoon.com/947451

Court : Kerala

Decided On : Aug-13-2012

Reported in : 2012(3)KLJ878; 2012(3)KLT921

Judge : The Honourable Mr.Justice S.S. Satheesachandran

Appeal No. : O.P.(CRL.) NOS. 659, 664, 1374, 1383 & 1384 OF 2012

Appellant : P.V. Chacko

Respondent : State of Kerala, Represented by the Public Prosecutor and Another

Judgement :

1. These original petitions have been filed under Articles 226 and 227 of the Constitution of India to quash the proceedings taken for execution of its orders by the Consumer Disputes Redressal Forum, Ernakulam, setting forth a case that such Forum is not competent to entertain complaint over, and proceed with, execution of its orders exercising the powers of a First Class Magistrate.

2. Petitioner, who is common in all the above petitions, had raised identical challenge as aforesaid to question the competency of the Consumer Disputes Redressal Forum, for short, the 'Forum' to enforce its orders as a First Class Magistrate. Some of the facts involved deserve to be taken note of before analysing the challenge posed for consideration.

3. The Forum on complaints filed by aggrieved persons against a financial concern and its Managing Director, the petitioner, has passed orders directing them to refund the amount collected from the respective complainant with interest and costs. Complainants in five cases, after passing of the orders by the Forum, filed separate petitions for execution. Receiving such petitions, the Forum proceeded with further steps thereof. Petitioner, who appeared before the Forum was enlarged on bail and at the stage when the proceedings were posted for enquiry, he filed the above original petitions raising a common challenge questioning the competency of the Forum to exercise the powers of a Magistrate to enforce its orders.

4. The facts are not in dispute, and the question emerging for consideration is strictly a pure question of law relating the interpretation to be placed over the 'conferment of powers' to the Forum to execute its orders exercising the powers of a Judicial First Class Magistrate. That being so, a detailed reference to the particulars of each case or of the exhibits produced in the cases is not called for. Still, to appreciate the question of law emerging for consideration, facts involved in each case, in a nutshell, can be stated thus:-

(i). In O.P.(CrI.).No.659 of 2012, petitioner is challenging the execution proceedings arising from Ext.P4 order produced in the above original petition, passed by the Forum in a complaint numbered as C.C.No.45 of 2011 filed by the 2nd respondent. The Forum vide Ext.P4 order has directed the opposite parties in Ext.P1 complaint (Financial concern and the petitioner, its Managing partner) to refund a sum of Rs.4,20,000/- collected from the complainant/2nd respondent with interest at 12% per annum and with a compensation of Rs.1,000/-. Ext.P6 petition was filed by the complainant before the Forum complaining of the failure of the opposite parties in the proceedings to comply with Ext.P4 order. (ii). O.P.(CrI.).No.664 of 2012 relates to a complaint numbered as C.C.No.46 of 2011 filed by the 2nd respondent in that original petition before the Forum, in which, Ext.P4 order was passed directing the opposite parties in that complaint to pay a sum of Rs.3,64,000/- collected from the complainant with interest at 12% per annum with compensation of Rs.1,000/-. Ext.P6 petition was filed by the complainant over the non-compliance of Ext.P4 order and the proceedings taken

thereof are pending. (iii). O.P.(CrI.).No.1374 of 2012 relates to C.C.No.118 of 2011, the complaint filed by the 2nd respondent in the above original petition, in which, Ext.P3 order was passed directing the opposite parties to pay a sum of Rs.25,000/- with 9% interest per annum to the complainant within a period of thirty days with further direction that in default of payment within such period, the amount awarded shall carry interest at 12% per annum from the date of such default. Ext.P5 petition was filed by the complainant/2nd respondent before the Forum on the failure of the opposite parties to comply with its order and the proceedings taken thereof are pending. (iv). O.P.(CrI.). No.1383 of 2012 relates to a complaint numbered as C.C.No.152 of 2011 filed by the complainant/2nd respondent, in which, the Forum has passed Ext.P2 order directing the opposite parties to pay a sum of Rs.1,38,750/- with 9% interest per annum within a period of thirty days with further direction that failing such payment, the amount awarded shall carry 12% interest per annum from the date of default. Ext.P4 petition was filed by the complainant/2nd respondent complaining of the non-payment of the amount ordered before the Forum and the proceedings taken thereof are pending. (v). O.P.(CrI.).No.1384 of 2012 relates to the complaint numbered as C.C.No.139 of 2011, in which, Ext.P2 order was passed by the Forum directing the opposite parties to pay a sum of Rs.20,000/- with 9% interest per annum to the complainant with further direction how the payment is to be effected and also liable to pay higher rate of interest if there was default in payment within the time fixed. Ext.P4 petition was filed by the complainant reporting the non-compliance of the order and proceedings taken by the Forum thereof are pending.

5. Perusing the complaints and also the orders passed by the Forum, it is noticed that in two among the complaint cases, the petitioner had been proceeded against as the Managing partner of a concern, namely, 'M/s Devadhan Lottery Services', which was implicated as the 1st opposite party in such complaints, and in the other three complaints as the Chairman of a concern, namely, 'LIS Group' with that concern as the 1st opposite party in such complaints, in relation to various schemes operated by such concerns inviting deposits from the general public promising them double or more of the amount deposited after the maturity period, with some extra benefits during the period of deposit. Such deposits have been collected by unfair trade practice and the amount deposited were not returned

even after the completion of the maturity period, was the case of the complainants, which found approval with the Forum in passing the orders indicated above in the complainants. Orders passed by the Forum not being complied with, in the proceedings taken by the complainants for executing them, summons being ordered to the petitioner, after entering appearance and enlarged on bail in such proceedings he has filed the above original petitions questioning the competency of the Forum to exercise the powers of the Judicial First Class Magistrate in executing its orders passed under the Act.

6. Though notices were ordered and served on the respective 2nd respondent/complainant before the Forum, only the 2nd respondent in O.P.(CrI.).No.1383 of 2012 has entered appearance through a counsel.

7. I heard the learned counsel for the petitioner, learned Public prosecutor and also the learned counsel for the 2nd respondent in the aforementioned original petition.

8. Learned Senior counsel Sri.M.K.Damodaran, who appeared for the petitioner, adverted to Section 27(2) of the Consumer Protection Act, 1986, for short, the 'Act' contended that the conferment of powers on the Forum with the powers of the Judicial Magistrate of the First Class for trial of the offences under the Act will come into effect and be operative only if it is so authorised and empowered under a notification published by the Government in the Official Gazette. Stressing upon the words 'on such conferment of powers' in the aforesaid sub section, it is urged by the learned Senior counsel, what has been stated preceding those words that the Forum "shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act" as such will not empower the Forum to exercise the powers of a Judicial Magistrate of the First Class. Section 11 of the Code of Criminal Procedure, for short, the 'Code' dealing with the establishment of Courts of Judicial Magistrate of the First Class, and Section 32 of the Code dealing with mode of conferring powers under the Code empowering persons by name or in virtue of their offices is also referred to by the learned Senior counsel to give emphasis to the words "on such conferment of powers" appearing in Section 27 (2) of the Act, to buttress the proposition canvassed that without a Government

notification conferring powers of a First Class Magistrate the Forum is incompetent and has no jurisdiction to exercise the powers of such a Magistrate. Pointing out that the offences under the Act are to be tried summarily, as ordained under sub section (3) of Section 27 of the Act, learned Senior counsel contended the Forum without conferment powers of a Magistrate under a Government notification and also further empowered to try the offences summarily by the High Court cannot exercise any powers of the Magistrate nor carry out any summary trial of the offences under the Act. Without having special empowerment by the High Court on the Forum to try the offences under the Act summarily, in accordance with the mandatory prescription covered under Section 260 (1) (c) of the Code, the Forum cannot try the offences summarily, is the argument of the counsel to assail the proceedings on the complaints proceeded in the cases by the Forum as vitiated, irregular and unsustainable under law. On the aforesaid challenges, learned Senior counsel urged for quashing of the proceedings in the complaint cases, referred to in the respective original petitions, pending on the file of the Forum.

9. Section 25 of the Act provides for enforcement of orders of the District Forum, the State Commission or the National Commission. Over and above that provision for enforcement of the orders passed by the Forum/Commission, a penal provision has also been provided under Section 27 of the Act to impose punishment against a person who fails or omits to comply with any order made by the Forum or Commission under Section 27 of the Act. That Section reads thus:

"27. Penalties:- [1] Where a trader or a person against whom a complaint is made [or the complainant] fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person [or complainant] shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees or with both:

[xxxx]

[(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Forum or the State Commission or the National

Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of the offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be.]"

Previously, before substitution of sub section (2), with new sub section (3), to the Section under Act 62 of 2002, sub section (2) reads thus:

"Provided that the District Forum, the State Commission or the National Commission, as the case may be, may, if it is satisfied that the circumstances of any case so require, impose a sentence of imprisonment or fine, or both, for a term lesser than the minimum term and the amount lesser than the minimum amount specified in this section."

Competency of the Forum or Commission to impose sentence of imprisonment or fine or with both, provided under the sub section earlier was seriously doubted of, and to obviate and dispel any question over the jurisdiction and authority of the Forum/Commission to do so that sub section has been substituted under Act 62 of 2002, and it has come into effect from 15.03.2003. That sub section commencing with a non obstante clause emphatically make it clear that it shall have operation and effect notwithstanding anything stated in the Code. When that be so, on coming into effect of that sub section in the Statute, normally, no special conferment of powers of a Judicial First Class Magistrate on the Forum/Commission, by a notification issued by the Government to exercise its powers to impose penalties against a trader or a person or complainant where he fails or omits to comply with any of its order is needed.

10. The Supreme Court had occasion to consider the impact of Section 27 of the Act, but, before the substitution of sub section (2) in Section 27 of the Act when a challenge was mooted against the Constitutional validity of some provisions of the

Act in an appeal arising from the judgment rendered by the High Court of Karnataka. The High Court has turned down the challenges, but, with some observations regarding the interpretation to be placed over Section 25 of the Act regarding the mode of enforcement of its orders by the Forum/Commission. An appeal was preferred by the State of Karnataka taking exception to the observations made by the High Court, and in the decision rendered in that case reported as *State of Karnataka v. Vishwabharathi House Building Co-operative Society and Others* ((2003) 2 SCC 412), after examining the Constitutional validity over the establishment of the Forum/Commission and its jurisdiction, competency and authority, agreeing with the finding of the High Court and upholding the Constitutionality of the Act, the Supreme Court disagreed with the observations placed over by Section 25 of the Act by the High Court. In considering and interpreting Section 25 of the Act, which, as already indicted, deal with the enforcement of orders of the Forum/Commission, Section 27 of the Act which deal with the additional power of the Forum to execute its orders imposing penalty, was also taken note of and considered, and the following observations thereto have been made:-

"58. Section 27 of the Act also confers an additional power upon the Forum and the Commission to execute its order. The said provision is akin to Order 39 Rule 2-A of the Code of Civil Procedure or the provisions of the Contempt of Courts Act or Section 51 read with Order 21 Rule 37 of the Code of Civil Procedure. Section 25 should be read in conjunction with Section 27. A parliamentary statute indisputably can create a tribunal and might say that non-compliance with its order would be punishable by way of imprisonment or fine, which can be in addition to any other mode of recovery.

59. It is well settled that the cardinal principle of interpretation of statute is that courts or tribunals must be held to possess power to execute their own order.

60. It is also well settled that a statutory tribunal which has been conferred with the power to adjudicate a dispute and pass necessary order has also the power to implement its order. Further, the Act which is a self-contained code, even if it has not been specifically spelt out, must be deemed to have conferred upon the

Tribunal all powers in order to make its order effective."

11. The interpretation placed over Section 27 of the Act by the Supreme Court was before substitution of sub section (2) of that Section does not in any way affect its binding force, nor is it a reason to hold that it is not applicable in examining, interpreting, considering and also understanding the effect and impact of the newly substituted sub section vis-a-vis the powers, authority and jurisdiction of the Forum/Commission. Statute has empowered the Forum or Commission to impose penalty against the person who fails to comply with its order. It also provides authority to punish such person with imprisonment or fine or with both, fixing the minimum and also the maximum thereof. In imposing of such punishment as a penalty for non-compliance of its order, the Forum/Commission shall have the power of the Judicial Magistrate of First Class for the trial of offences notwithstanding anything contained in the provisions of the Code, is the pith and substance of sub section (2) of Section 27 of the Act. The words in that sub section 'on such conferment of powers' no way indicate that a separate notification from the Government is required to enable the Forum or Commission to exercise the powers of a Judicial Magistrate of the First Class, especially, where the Statute makes it clear that it has been conferred with the power of a Judicial Magistrate of the First Class in enforcing its orders by imposing penalty against the defaulting party. The aforesaid words 'on such conferment of powers' cannot be read in isolation but to be understood and read in relation to the preceding clause, by which, on the substitution made, the Forum/Commission has been conferred with the power of a Judicial Magistrate of the First Class for trial of the offences under the Act. So much so, when a Forum or Commission is established under the Act, and, then, statutorily empowered with the powers of a Judicial Magistrate of the First Class for trial of the offences to enforce its orders to proceed against a trader, person or complainant for non-compliance of its orders, there is no requirement for conferment of powers of a Magistrate by way of a notification by the Government to enable the Forum or Commission to exercise the powers of a Magistrate in imposing penalties. Such conferment of powers of a Magistrate on the Forum/Commission to exercise the powers of a Magistrate, is necessary, the challenge canvassed with reference to Sections 11 and 32 of the Code cannot have any merit where sub section (2) itself makes it clear that the power conferred

and enjoined on the Forum or Commission to exercise the powers for the trial of the offences is statutorily conferred notwithstanding anything to the contrary in the Code.

12. There is also no merit in the challenge that the Forum or Commission for trying the offence relating to non-compliance of its orders 'summarily' as provided under sub section (3) of Section 27 requires empowerment on that behalf from the High Court as under Section 260 (c) of the Code. A Forum or Commission established under the Act and empowered to try the offences relating to non-compliance of its orders, for imposition of penalties, as provided, does not require any sanction from the High Court where the Act itself makes it clear that it can try the offence under the Act summarily. In a deserving case it may be open to the Forum or Commission to follow a different procedure having regard to the imposition of penalty that may be called for in the facts and circumstances presented. Sub section (2) of Section 27 of the Act providing for trial of the offences summarily by the Forum or Commission in no way indicates that to proceed for summary trial over offences covered by the Act, the Forum/Commission established under that Act requires sanction from the High Court. What has been stated by sub section (3) of Section 27 of the Act is only that the offence may be tried summarily by the Forum or Commission, leaving it open to the Commission to decide its own procedure in consonance with the Procedural Code in trial of the offences under the Act for imposing penalty covered under the aforesaid section when proceedings are initiated for non-compliance of its order.

13. A Division Bench of Madras High Court had occasion to consider similar challenges canvassed as in the present case that the Forum/Commission to exercise powers of the Judicial Magistrate of First Class requires conferment of powers by a notification from the Government and also permission from the High Court for summary trial of the offences under the Act. The Division Bench in that case reported as *Anil Kumar.V. v. State of Tamil Nadu* (2008 (2) KHC 346) has repelled the challenges pointing out that the District Forum/State Commission has been established by the State Government under Sections 9(a) and (b) of the Act, and when that be so, with the statutory conferment under sub section (2) of Section 27 of the Act to exercise the powers of a Magistrate in the trial of the

offences under the Act on such Forum/Commission, no second notification is required under Sections 11(1) or 16(1) or 32(1) of the Code. To do so, it has been stated, would be violative of the statutory conferment of powers given under the Act and more so, imposition of an artificial restriction on the powers of the Forum or Commission established under the Act. I am in respectful agreement with the views so expressed by the Division Bench. Then also, it has to be noted conferment by way of notification under Section 11(1) of the Code is for establishment of a Court of Judicial Magistrate, and where a Forum or Commission already established by notification under Section 9(a) or (b) of the Act when endowed with the powers of the Judicial Magistrate that too only for the purpose of exercising its authority to enforce its order by imposition of penalty, no question of establishment of any court of the Judicial Magistrate is called for or needed. No establishment of the Court of Judicial Magistrate as envisaged under Section 11(1) of the Code and conferring of powers under Section 32(1) of the Code on a Forum or Commission duly established under a notification by the Government is required for, more so, where it has been statutory empowered to exercise the powers of a Judicial First Class Magistrate in the trial of the offence under the Act.

14. There is no merit in the challenges raised questioning the competency and authority of the Forum to exercise the powers of the Judicial Magistrate of First Class to enforce its orders on its non-compliance.

All original petitions are dismissed.

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