

P. Balachandran and Others Vs. the State of Kerala, Represented by the Public Prosecutor, High Court of Kerala and Others

P. Balachandran and Others Vs. the State of Kerala, Represented by the Public Prosecutor, High Court of Kerala and Others

SooperKanoon Citation : sooperkanoon.com/947585

Court : Kerala

Decided On : Jun-25-2012

Reported in : 2012(3)KLJ474; 2012(3)ILR(Ker)580

Judge : B.P. RAY

Appeal No. : Crl.M.C.Nos.2614, 2638, 2649, 2694, 2696, 2697, 3640, 3644 & 3645 of 2004

Appellant : P. Balachandran and Others

Respondent : The State of Kerala, Represented by the Public Prosecutor, High Court of Kerala and Others

Judgement :

1. These petitions were filed by the petitioner for quashing the order in C.M.P.1327/1995 and C.P.No.112/2004, C.M.P.5731/95 and C.P.115/2004 and C.M.P.No.2712/95 and C.P.No.113/2004 and all further proceedings in pursuance to and in furtherance thereof pending before the Judicial Magistrate of the First Class, Kuthuparamba.

2. C.M.P.Nos.1327/95, 5731/95 and 2712/95 are private complaints filed against the petitioner and other accused for offences punishable under Sections 302, 307 and 120B read with Section 34 I.P.C. for the murder of the complainant's son or

brother, as the case may be, in the respective complaints.

3. The complainant's case is that on 25.11.1994, the accused persons opened fire with their common intention to commit murder of the victims in the respective complaints without any provocation. On 25.11.1994 at 11 a.m., Sri.M.V. Raghavan the then Minister for Co-operation, the accused named in the complaint was to inaugurate the evening branch of the Kuthuparamba Co-operative Urban Bank in the Alakandi Shopping Complex at Kuthuparamba at the side of the Kuthuparamba Thalassery Road, near Kuthuparamba junction. A public meeting was also arranged at the Municipal Town Hall in connection with this function. The activists of Democratic Youth Federation of India (DYFI) arranged a black flag demonstration against Sri.M.V.Raghavan while he comes to Kuthuparamba for the above inaugural function, as part of their campaign against corruption and nepotism. It was a thoroughly peaceful demonstration of black flag. All the persons participated in the demonstration were absolutely unarmed. In continuation of the aforesaid merciless and illegal lathicharge on the unarmed people, the petitioner and the other accused resorted to firing with deliberate intention to kill the complainant's kith and kin. Even without any lawful order from a competent magistrate having jurisdiction over the area, they, with deliberate intention to kill innocent people, shot people killing five innocent youngsters and causing serious injuries to a large number of persons. One person who suffered severe gunshot injuries on the neck is now living as a vegetable.

4. In CrI.M.C.Nos.2694, 2696 and 2697/2004, the petitioner, the then Deputy Collector (Housing), Collectorate, Kannur seeks for quashing the order in the very same Civil Miscellaneous Petitions and Complaint Petitions mentioned above and all further proceedings in pursuance to and in furtherance thereof pending before the Judicial Magistrate of the First Class, Kuthuparamba. The complaint in CrI.M.C.Nos.2694 and 2696/2004 were filed by the brothers of one Rajeev and C.Babu who died in the police firing and the complaint in CrI.M.C.2697/2004 was filed by the father of one Roshan who also died in the police firing.

5. CrI.M.C.Nos.3640, 3644 and 3645/2004 were filed by the petitioner, the then Deputy Superintendent of Police, Kannur Sub Division, Accused No.1 in C.P.

115/2004 and Accused No.2 in C.P.Nos.112 and 113/2004 on the file of the above Magistrate for quashing the orders in C.M.P.2712/95, 5731/95 and 1327/95. The said complaint petitions were filed alleging commission of offences punishable under Sections 302, 307 and 120B read with Section 34 I.P.C.

6. Crl.M.C.2638 of 2004 was filed by the petitioner, who is the fifth accused in C.P.113/2004 on the file of the Judicial Magistrate of the First Class, Kuthuparamba for quashing the order in C.M.P.2712/95. The said complaint petition was filed alleging offences punishable under Sections 302, 307 and 120B read with Section 34 I.P.C. The case was registered against him on the basis of a complaint by the father of one Roshan who dies in the police firing at Kuthuparamba.

7. Crl.M.C.2614/2004 was filed by the petitioner, a police constable, who is the fifth accused in C.P.114/2004 on the file of the very same Magistrate for quashing the order in C.M.P.3341/95. The said complaint petition was filed against the petitioner alleging commission of offences punishable under Sections 143, 147, 148, 302 and 120B read with Section 149 I.P.C. The case was registered against him on the basis of a complaint by the father of one Shibulal who died in the police firing at Kuthuparamba.

8. Crl.M.C.2649/2004 was filed by the petitioner, a police constable, who is the fifth accused in C.P.115/2004 of the file of the above Magistrate for quashing the order in C.M.P.5731/95. The said complaint petition was filed alleging commission of offences punishable under Sections 302, 307 and 120B read with Section 34 I.P.C. The complaint was registered by the brother of one Baby who died in the police firing.

9. I have discussed the facts of the case as well as the history of the case in different courts, including the Honourable Apex Court in Crl.M.C.Nos.2145, 2147 and 2148/2004. Therefore, I do not want to deal with the facts of each case separately.

10. Learned counsel for the petitioners submits that the prosecution, being vexatious, continuation of the same will be sheer abuse of process of court. There

is no material to show that the petitioners had any common intention to commit an offence. Therefore, cognizance taken with the aid of Section 34 I.P.C. is bad. The petitioners were deputed for maintenance of law and order. Since the occurrence took place while the petitioners were discharging their official duty, prosecution is barred without a valid sanction.

11. Learned counsel for the respondents submits that it was a merciless and illegal lathicharge on the unarmed people and the petitioners resorted to firing with deliberate intention to kill the complainant's kith and kin. Even without any lawful order from a competent magistrate having jurisdiction over the area, they, with deliberate intention to kill innocent people, shot people killing five innocent youngsters and causing serious injuries to a large number of persons, namely, Roshan Babu, Madhusoodharan, Rajeevan, Babu and Shibulal. One Pushpan, who suffered severe gunshot injuries on the neck, is now living as a vegetable. Learned counsel further submits that the petitioners and other accused have committed this inhuman and barbaric crime not in discharge of their official duty and therefore, they should face the trial. He has relied upon certain decisions reported in *State of Haryana and others v. Ch.Bhajan Lal and others* (A.I.R. 1992 S.C.604), *State of Bihar v. Rajendra Agrawalla* (1996 SCC Cri.628), *State of Karnataka v. M. Devendrappa and another* (2002 (3) SCC 89) and *Moosa v. Sub Inspector of Police* (2006 (1) KLT 552 (FB)).

12. It is contended by the respondents that Section 197 does not affect the jurisdiction of the Court to proceed but it is only one of the defence available to the accused persons which they can raise at the appropriate time. This argument has been repelled by the Honourable Apex Court in the case reported in *Sankaran Moitra v. Sadhna Das* (A.I.R. 2006 S.C. 1599) by holding that prosecution hit by the provision cannot be launched without the contemplated sanction.

13. The facts in the reported case are almost identical to that of the present case. There, a police officer in the course of his official duty went to the polling officer in the course of his official duty went to the polling booth where voting was going on for the State Assembly. There was breach of law and order. Some miscreants were creating untoward situation in the booth. In order to make the polling free and

fair and prevent booth capturing, lathicharge was resorted to. Consequently, a person died. It was contended that the deceased was picked up and chosen for assault. He was beaten up at the instance of the accused. The Honourable Apex Court held that even if it would be held to be an offence, still it was committed during the course of performance of official duty and it would attract sanction. If in all cases one has to establish the necessity of sanction in the trial, the provision would lose its effectiveness and purpose, thereby it would be reduced to mere dead letters. I have already held that there being no sanction, the impugned order taking cognizance of offences is bad in law and is, therefore, liable to be quashed.

In that view of the matter, I have no hesitation to quash the proceedings. Accordingly, these Crl.M.Cs. are allowed quashing the complaints, orders and all further proceedings against the petitioners in C.P.Nos.112, 113, 114 and 115/2004 on the file of the Judicial Magistrate of the First Class, Kuthuparamba. The observations herein, however, shall not prejudice the rights of the complainant in any prosecution after the requirements of Section 197(1) of the Code of Criminal Procedure are complied with.

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