

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 19TH DAY OF JULY 2023 / 28TH ASHADHA, 1945

CRL.MC NO. 1816 OF 2016

TO QUASH ANNEXURE.A CHARGE SHEET AND ALL FURTHER PROCEEDINGS IN
C.C. NO.959/2013 PENDING TRIAL ON THE FILES OF JUDICIAL FIRST
CLASS MAGISTRATE COURT, PERUMBAVOOR, ERNAKULAM DISTRICT

PETITIONER/ACCUSED:

SUMESH

AGED 41 YEARS, S/O.SUKUMARAN, ANACHALIL VEEDU,
LALITHA NIVAS, KURIKKAD, TRIPUNITHURA.

BY ADVS.

SRI.C.K.SURESH

SRI.MANSOOR.B.H.

RESPONDENTS/COMPLAINANT/STATE:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, THROUGH STATION HOUSE OFFICER,
PERUMBAVOOR POLICE STATION, ERNAKULAM DISTRICT,
PIN - 683 542.
- 2 MINI
AGED 35 YEARS, D/O.PAPPACHAN, KOMARAPILLY HOUSE,
CHELAD VILLAGE, KOTHAMANGALAM - 683 542.
BY ADVS.
SRI.P.ANTO THOMAS
SRI.P.ANTO THOMAS
SRI.BABU CHERUKARA
SRI.JEEMON JOHN
PP - SANAL P RAJ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
19.07.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

"C.R."

ORDER

Dated this the 19th day of July, 2023

This petition has been filed under Section 482 of the Code of Criminal Procedure to quash Annexure.A charge sheet filed in Crime No.1921/2011 of Perumbavoor Police Station which has been pending as C.C. No.959/2013 before the Judicial First Class Magistrate Court, Perumbavoor.

2. The petitioner is the sole accused in the above crime. Respondents are State of Kerala as well as the defacto complainant.

3. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor in detail.

4. The learned counsel for the petitioner would submit that in this case, when the 2nd respondent/defacto complainant lodged a complaint before the Magistrate Court alleging commission of offences punishable under Sections 376 and 493 of IPC,

the same was forwarded to Perumbavoor Police by the Magistrate for investigation. During investigation, the Investigating Officer found that the offence punishable under Section 493 of IPC alone was made out while reporting that there are no materials to hold that the accused/petitioner committed the offence punishable under Section 376 of IPC. The point argued by the learned counsel for the petitioner is that as per the charge sheet now filed by the Investigating Officer, the only offence alleged to be committed by the accused is one under Section 493 of IPC. Therefore, it is argued that in view of the bar under Section 198 of Cr.P.C., the Court cannot take cognizance for the offence punishable under Section 493 of IPC, acting on the police report. Therefore, the cognizance is bad in law and as such the same is liable to be set aside.

5. Whereas the learned Public Prosecutor opposed this contention contending that when non-cognizable offence along with cognizable offence being investigated, there is no bar as argued by the learned

counsel for the petitioner. As such this petition must fail.

6. In view of the rival arguments, the question arises is; what is the legal effect of a Final Report filed by the police finding commission of non-cognizable offence/offences on completing investigation involving allegation of commission of cognizable and non-cognizable offences?

7. To be on the facts of this case, it is crystal clear from Annexure.A charge sheet that the Magistrate forwarded a complaint alleging commission of offences inclusive of cognizable and non-cognizable offences. During investigation, the Investigating Officer found that only non-cognizable offence was made out. Accordingly, he had filed Annexure.A Final Report. Acting on the Final Report, the learned Magistrate proceeded the matter and took cognizance for the offence punishable under Section 493 of IPC.

8. No doubt, Section 198 of Cr.P.C. provides that no court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860)

except upon a complaint made by some persons aggrieved by the offence. In the case at hand, the complainant rightly lodged complaint before the proper court, which in turn forwarded to the police for investigation, since the complainant alleged commission of 'cognizable' and 'non-cognizable' offences.

9. At the same time, Section 2(d) of Cr.P.C. defines a complaint as under:

*"2. **Definitions.** - In this Code, unless the context otherwise requires,-*

(a) xxx

(b) xxx

(c) xxx

(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.

Explanation - A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;"

10. Reading the explanation to the definition under Section 2(d) of Cr.P.C., it is clear that a report made by the police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint and the police officer by whom such report is made shall be deemed to be the complainant.

11. Since the learned counsel for the petitioner has appraised the facts of this case, he has placed a decision of the Apex Court reported in ***State of Orissa v. Sharat Chandra Sahu and Another*** [(1996) 6 SCC 435], which dealt with the powers of the investigation when cases involving cognizable and non-cognizable offences. In the said decision the Apex Court considered the mandate of Section 155(4) of Cr.P.C. and held that where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

12. Section 155(4) of Cr.P.C. reads as under:

"155. Information as to non-cognizable cases and investigation of such cases.-

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable."

13. In paragraph Nos. 10, 11 and 12 of the above decision the Apex Court held as under:

"10. Sub-section (4) of this section clearly provides that where the case relates to two offences of which one is cognizable, the case shall be deemed to be a cognizable case notwithstanding that the other offence or offences are non-cognizable.

11. Sub-section (4) creates a legal fiction and provides that although a case may comprise of several offences of which some are cognizable and others are not, it would not be open to the police to investigate the cognizable offences only and omit the non-cognizable offences. Since the whole case (comprising of cognizable and non-cognizable offences) is to be treated as cognizable, the police had no option but to investigate the whole of the case and to submit a charge-sheet in respect of all the offences, cognizable or non-cognizable both, provided it is found by the police during investigation that the offences appear, prima facie, to have been committed.

12. Sub-section (4) of Section 155 is a new provision introduced for the first time in the Code in 1973. This was done to overcome the controversy about investigation of non-cognizable offences by the police without the leave of the Magistrate. The statutory provision is specific, precise and clear and there is no ambiguity in the

language employed in sub-section (4). It is apparent that if the facts reported to the police disclose both cognizable and non-cognizable offences, the police would be acting within the scope of its authority in investigating both the offences as the legal fiction enacted in sub-section (4) provides that even a non-cognizable case shall, in that situation, be treated as cognizable."

14. Applying the ratio of **Sharat Chandra Sahu's** case (supra) if the facts reported to the police disclose both cognizable and non-cognizable offences, the police would be acting within the scope of its authority in investigating both the offences as the legal fiction enacted in sub-section (4) provides that even a non-cognizable case shall, in that situation, be treated as cognizable.

15. Since the law is settled in the facts of the given case, though the Magistrate forwarded a complaint involving offences cognizable and non-cognizable in nature to the police and the police files a report finding that non-cognizable offence was committed, the

Magistrate is legally empowered to proceed with the trail. If so, the contentions raised by the learned counsel for the petitioner in the facts of the case at hand must fail.

Therefore, the Crl.M.C. stands dismissed.

sd/-

**A. BADHARUDEEN
JUDGE**

SK

APPENDIX OF CRL.MC 1816/2016

PETITIONER'S ANNEXURES :

**ANNEXURE A: COPY OF THE CHARGE SHEET IN CRIME
 NO.1921/2011 OF PERUMBAVOOR POLICE STATION.**

RESPONDENTS' EXHIBITS: NIL