

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

MONDAY, THE 18TH DAY OF JANUARY 2021 / 28TH POUSHA, 1942

OP(Cr1.).No.383 OF 2020

AGAINST THE ORDER/JUDGMENT IN CRL.M.P 935/2020 DATED 30-11-2020  
OF THE CHIEF JUDICIAL MAGISTRATE OF FIRST CLASS  
-II, THIRUVANANTHAPURAM

CRIME NO.6/2014/SIU-1TVPM OF VACB, THIRUVANANTHAPURAM ,

PETITIONER:

SREEJITH PREMACHANDRAN  
AGED 42 YEARS  
S/O PREMACHANDRAN,  
RESIDING AT PURA 21, SREEPRASURA, NETHAJI ROAD,  
POOJAPPURA, THIRUVANANTHAPURAM-695012.

BY ADVS.  
SRI.T.ASAFALI  
SMT.LALIZA.T.Y.

RESPONDENTS:

- 1 BIJU RAMESH  
AGED 55 YEARS  
S/O RAMESAN, RAJADHANI COMPLEX, EAST FORT, POST,  
THIRUVANANTHAPURAM-695023.
- 2 THE SUPERINTENDENT OF POLICE  
VACB, SPECIAL INVESTIGATION UNIT, NO.1,  
THIRUVANANTHAPURAM, REPRESENTED BY PUBLIC  
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682031.

R1 BY ADV. SMT.P.DEEPTHI  
R1 BY ADV. SRI.C.P.SAJI

OTHER PRESENT:

SRI B JAYASURYA-SR PP

THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 11-01-2021,  
THE COURT ON 18-01-2021 DELIVERED THE FOLLOWING:

**R.NARAYANA PISHARADI, J**

\*\*\*\*\*

O.P.(CrI) No.383 of 2020

-----  
Dated this the 18<sup>th</sup> day of January, 2021

**J U D G M E N T**

The petitioner filed an application under Section 340 (1) of the Code of Criminal Procedure, 1973 (for short 'the Code') in the Court of the Judicial First Class Magistrate-II, Thiruvananthapuram for initiating prosecution against the first respondent by instituting a complaint for committing an offence punishable under Section 193 of the Indian Penal Code (IPC).

2. Ext.P1 is the copy of the application filed by the petitioner under Section 340 (1) of the Code. The crux of the allegations in this application is that the first respondent, while giving statement before the Judicial First Class Magistrate-II,

Thiruvananthapuram under Section 164(5) of the Code, in the course of investigation of the case which was registered as VC-No.6/2014/SIU-1 by the Vigilance and Anti-corruption Bureau (VACB), made false statement on oath and he voluntarily produced a mobile phone and an edited compact disc before the learned Magistrate. It is alleged that the compact disc produced by the first respondent before the learned Magistrate contained record of the conversations contained in the mobile phone and that such recorded conversations had been edited.

3. As per Ext.P2 order, the court below found that it has no jurisdiction to entertain the application filed by the petitioner and the application was returned for presentation before the proper court.

4. The petitioner has filed this Original Petition under Article 227 of the Constitution of India, challenging the legality and propriety of Ext.P2 order.

5. Heard learned counsel for the petitioner and the first respondent and also the learned Public Prosecutor.

6. The relevant portion of Ext.P2 order reads as follows:

*"Heard. Perused the records. The 164 statement of witness No.1 in the above mentioned case is recorded by the learned magistrate on 30.5.2015 as per the direction of the Hon'ble Chief Judicial Magistrate, Thiruvananthapuram. No judicial proceeding with respect to that offence is pending before the Judicial I Class Magistrate Court-II, Thiruvananthapuram. The term 'Court' in S.340(1) Cr.P.C indicates that there must be power to record evidence and to come to a judicial determinates on the evidence so recorded. Here the matter is pending before the vigilance court. Hence this court has no jurisdiction to entertain this petition and it is returned for presenting before proper court."*

7. Learned counsel for the petitioner contended that the court below failed to exercise its jurisdiction by refusing to entertain the application filed by the petitioner. Learned counsel would contend that the petitioner had filed the application under Section 340 (1) of the Code in the proper Court which had got the power to institute a complaint against the first respondent for committing any of the offences enumerated under Section 195

(1) (b)(i) of the Code.

8. Learned counsel for the first respondent has raised the following contentions. (1) The petitioner is a total stranger to the case registered and investigated by the VACB and the proceeding before the learned Magistrate and therefore, the petitioner has no locus standi to file an application under Section 340(1) of the Code. (2) When the statement of a witness is recorded by the Magistrate under Section 164 of the Code, the Magistrate exercises power under the Code not as a Court but in his capacity as a judicial officer. Therefore, there was no proceeding, much less any judicial proceeding, in any court in relation to which any of the offences enumerated under Section 195(1)(b)(i) of the Code was committed. (3) No application under Section 340 (1) of the Code would lie after conclusion of the proceeding, if any, which was pending before a court.

9. Section 340(1) of the Code states that, when, upon an application made to it in that behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b)

of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-(a) record a finding to that effect; (b) make a complaint thereof in writing; and (c) send it to a Magistrate of the first class having jurisdiction.

10. Section 195(1)(b)(i) of the Code provides that, no Court shall take cognizance of any offence punishable under Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 IPC, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in that behalf, or of some other Court to which that Court is subordinate.

11. The petitioner is a total stranger to the case which was investigated by the VACB. In **Natarajan v. Subba Rao : AIR 2003 SC 541**, the Apex Court has observed as follows:

*"In ordinary crimes not adverted to under Section 195 Cr.P.C, if in respect of any offence, law can be set into motion by any citizen of this country, we fail to see how any citizen of this country cannot approach even under Section 340 Cr.P.C. For that matter, the wordings of Section 340 Cr.P.C are significant. The Court will have to act in the interest of justice on a complaint or otherwise".*

12. A court directing a prosecution for perjury does so not to vindicate the grievance of any party but to safeguard the prestige and the dignity of the Court and to maintain the confidence of the people in the efficacy of the judicial process. Solemnity is attached to an oath taken by a witness. When a party speaks to a thing which is not true or which he has reason to believe to be not true under oath he is flouting the administration of justice and the Court is interested in seeing that this does not go unnoticed. The offender must then be brought to book. Therefore the court initiates a prosecution wherein the accused can have a fair trial. This is primarily a matter for the Court and not for a party even when a party moves a petition for taking action for perjury against another.

The party, even when he is an applicant under Section 340 of the Code, is more or less an informant bringing to the Court's notice a situation which may call for action, a situation which possibly the court may otherwise miss to notice. There is no rule that only a party to a proceeding would be competent to move the Court under Section 340 of the Code. In appropriate cases even at the instance of a stranger the Court may look into a plea that a witness or a party has been guilty of giving false evidence (See **Muraleekrishna Das v. Inspector General of Police : 1978 KLT 292**).

13. In the light of the law laid down in the aforesaid decisions, the contention of the first respondent that the petitioner has no locus standi to file an application under Section 340 (1) of the Code cannot be accepted.

14. There is also no merit in the contention of the learned counsel for the first respondent that when the Magistrate records the statement of a witness under Section 164 of the Code, he acts as *persona designata* and not as a court. As per Section 6 of the Code, Magistrates are labelled as criminal



courts. Section 3 of the Indian Evidence Act also states that a Court includes all Judges and Magistrates.

15. It is no doubt true that the Code assigns to a Magistrate various functions which do not strictly fall within the sphere of judicial duties. It does not mean that a Magistrate does not act as a Court. The Code does not contain any provision to the effect that no function performed by a Magistrate in relation to criminal proceedings whether handled by him or dealt with by the police would be regarded as function performed by a Court. Even while exercising the powers under the Code at a point of time before taking cognizance of any offence, a Magistrate acts as a Court. Taking cognizance of an offence by a Magistrate under Section 190 of the Code is not a condition precedent for him to be regarded as a Court (See **Kamalapati Trivedi v. State of West Bengal : AIR 1977 SC 777**).

16. Yet another contention raised by the learned counsel for the first respondent is that an application under Section 340 (1) of the Code cannot be filed after conclusion of the proceeding which was pending before the court and such an application can

be filed only during the course of such proceeding. There is no merit in this contention also. There is no requirement that the proceeding in relation to which the offence has been committed shall be pending at the time of filing the application under Section 340 (1) of the Code. (See **State of Maharashtra v. Sk.Bannu and Shankar: AIR 1981 SC 22**). An application under Section 340(1) of the Code can be filed even after the conclusion of the proceeding (See **Wazir Singh v. Kulwant Singh: 1997 SCC OnLine P&H 1084**).

17. Section 340(1) of the Code refers to proceeding in a court and it does not mention judicial proceedings. Of course, the first part of Section 193 IPC would show that it is necessary that the acts mentioned in that part shall be committed in any stage of a judicial proceeding to make them offences under that provision. But, the second part of Section 193 IPC does not contain any such requirement. Section 2(i) of the Code states that judicial proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath. However, the question whether recording the statement of a witness under

Section 164 of the Code is a judicial proceeding or not, does not arise for consideration by this Court at this stage because it is a matter to be considered by the Court which deals with the application under Section 340(1) of the Code in order to determine whether any offence punishable under Section 193 IPC has been, *prima facie*, committed by the first respondent.

18. As per the allegation in Ext.P1 application, when the first respondent produced the compact disc before the learned Magistrate, it had already been edited. Section 195(1)(b)(ii) of the Code would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis (See **Iqbal Singh Marwah v. Meenakshi Marwah : AIR 2005 SC 2119**). But, there is no allegation in Ext.P1 application that the first respondent has committed any of the offences mentioned in Section 195(1)(b)(ii) of the Code. The allegation is only that he committed an offence punishable under Section 193 IPC which is one of the offences mentioned in

Section 195(1)(b)(i) of the Code. The offences mentioned under Section 195(1)(b)(i) and Section 195(1)(b)(ii) are clearly distinct. The first category of offences refers to offences of false evidence and offences against public justice, whereas, the second category of offences relates to offences in respect of a document produced or given in evidence in a proceeding in any court. Though Section 340 of the Code is a generic section for offences committed under Section 195(1)(b), the same has different and exclusive application to clauses (i) and (ii) of Section 195(1)(b) of the Code (See **Narendra Kumar Srivastava v. State of Bihar : AIR 2019 SC 2675**).

19. In the light of the decision of the Apex Court in **Kamalapati Trivedi** (supra), the view of the learned Magistrate that, the term 'Court' in Section 340(1) of the Code means the court which has power to record evidence and to come to a judicial determination on the evidence so recorded, is clearly erroneous. The words "such court" in Section 340(1) of the Code mean the very court before which a person has made false statement or tendered in evidence any document in respect of

which the offence is alleged to have been committed. In other words, the expression "such Court" in Section 340(1) of the Code refers to that court before which the relevant proceeding is/was pending and which is competent to file a complaint in respect of the offences under Section 195(1)(b) of the Code.

20. Of course, the view of the learned Magistrate could have been accepted if the VACB had, after investigation, filed any charge sheet against the accused in the Special Court/Vigilance Court and the trial of the case was conducted in that Court. But, the VACB has filed a refer report in the case before the Special Court. In **Bannu and Shankar** (supra), the Apex Court has noticed the decision of the Madras High Court in **Maromma V. Emperor : (AIR 1933 Madras 125)** in which it was held that a false statement made during police investigation before a Magistrate and recorded under Section 164 of the Code regarding an offence of murder, which is triable only by a Sessions Court, must be held to be in relation to the trial in the Sessions Court and a complaint for the offence punishable under Section 193 IPC in relation to such statement can be given by the

Sessions Court. The Supreme Court has explained the rationale behind this decision as follows:

*"If the two proceedings, one in which the offence is committed and the other, the final proceedings, in the same or a transferee court are, in substance, different stages of the same integrated judicial process, the offence can be said to have been committed "in relation to" the proceedings before the Court to whom the case was subsequently transferred or which finally tried the case".*

The situation in the present case is not as stated above. Therefore, the view taken by the learned Magistrate cannot be accepted as correct.

21. The discussion above leads to the conclusion that the Court of the Judicial First Class Magistrate-II, Thiruvananthapuram has jurisdiction to entertain and consider the application filed by the petitioner under Section 340(1) of the Code.

22. Consequently, the original petition is allowed and Ext.P2 order is set aside. The Court of the Judicial First Class

Magistrate-II, Thiruvananthapuram is directed to receive on file Ext.P1 application and to consider and dispose of it in accordance with law.

Sd/-

**R.NARAYANA PISHARADI, JUDGE**

al/-

