

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

Crl.Rev.Pet.No. 401 of 2014 ()

(AGAINST THE ORDER IN CMP 3610/2013 IN CC 151/2011 OF JFCM COURT-III,
KOTTAYAM)

REVISION PETITIONER/PETITIONER/ ACCUSED:

BALACHANDRAN
S/O P.K. VASU, P.C.K. 6369
KOTTAYAM EAST POLICE STRATION, KANNAMMATHARA HOUSE
AYMANAM KARA, AYMANAM VILLAGE, KOTTAYAM DISTRICT

BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM

RESPONDENT(S)/RESPONDENT/ STATE:

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM 682031
REPRESENTED BY THE CIRCLE INSPECTOR OF POLICE
KOTTAYAM 686002

Addl.2. SABU THOMAS
S/O.THOMAS, CHERUVANNIL VEEDU,
CHETHIMATAM
LALAM VILLAGE,
KOTTAYAM - 686 575.
(ADDL.R2 IS IMPEADED AS PER THE ORDER DATED 07.11.2014
IN CRL.M.A.6916/2014)

R1 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
27-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.401 of 2014

Dated this the 27th day of October 2015

ORDER

The revision petitioner is the sole accused in C.C. No.151 of 2011 on the files of the Court of the Judicial Magistrate of First Class - III, Kottayam.

2. The above case was charge-sheeted by the police for the offence under Section 465 I.P.C. The revision petitioner filed C.M.P. No.3610 of 2013 under Section 239 of the Code of Criminal Procedure (for short 'the Code') before the court below praying for discharge. The court below dismissed the said petition. Aggrieved by the said order, this revision petition has been filed.

3. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

4. The prosecution allegation is that the revision petitioner, while working as a Police constable in Kottayam East Police Station, forged the signature of the *de-facto complainant* in the summons issued from the Court of the Judicial Magistrate of First Class - 1, Kottayam in C.C. No.904 of 2008 and thereafter, forwarded the said summons to the Court on 29.09.2009.

5. On the said allegation, C.M.P.No.5460 of 2009 was filed by the *de-facto complainant* before the Judicial Magistrate of First Class-1, Kottayam. The learned Magistrate forwarded the said complaint to the Station House Officer, Kottayam East Police Station for investigation and report under Section 156(3) of the Code.

Accordingly, the crime was registered.

6. The learned counsel for the revision petitioner has relied on the decision of this Court in **Superintendent of Police, CBI v. State of Kerala** [2005(3) KLT 823] and argued that the learned Magistrate ought not have forwarded the complaint to the police for investigation and report under Section 156(3) of the Code, in view of the specific bar under Rule 26 of the Criminal Rules of Practice in Kerala (in short 'the Rules') and since the learned Magistrate had forwarded the same to the Police, the final report filed by the Police cannot be legally sustainable.

7. The learned Public Prosecutor, on the other hand, has submitted that Rule 26 of the Rules does not make any

inhibition in forwarding the complaint to the Police for investigation under Section 156(3) of the Code and the only inhibition is in the matter of forwarding the complaint to the Police for investigation under Section 202 of the Code and in the said circumstances, the order of the court below forwarding the complaint to the Police under Section 156(3) of the Code was perfectly in accordance with law and consequently, the final report filed by the Police under Section 173(2) of the Code does not warrant any interference.

8. It will be profitable in this context to understand Rule 26, which reads as follows:-

“26. Complaints against Police officers not to be referred to the Police.- A complaint against a Police Officer shall not be referred to by a Magistrate under Section 202 of the Code to any person other than a

Magistrate subordinate to him.”

9. A three Judge Bench of the Apex Court in **Ramdev Food Products Pvt. Ltd. v. State of Gujarat** (AIR 2015 SC 1742) observed in paragraph 22 thus:

“Thus, we answer the first question by holding that the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice, it is considered appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine “existence of sufficient ground to proceed”. Category of cases falling under Para 120.6 in *Lalita Kumari*, (AIR 2014 SC 187) (supra) may

fall under Section 202. Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case.”

10. It was further observed by the Apex Court in **Ramdev Food Products Pvt. Ltd** (supra) in paragraph 21 thus:

“On the other hand, power under Section 202 is of different nature. Report sought under the said provision has limited purpose of deciding “whether or not there is sufficient ground for proceeding”.

11. The above decision of the Apex Court would make it clear that the cases where the Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine “existence of sufficient ground to proceed”, whereas when the Magistrate finds that a case is made out to proceed forthwith, then the

Magistrate issues direction under Section 156(3) of the Code. The report filed after completing the investigation under Section 202 of the Code forms part and parcel of the proceedings under Section 202 of the Code. Therefore, the complainant will be having no option to exclude the materials collected during the course of investigation by the Police under Section 202 of the Code. Therefore, there will be apprehension in the mind of the complainant that the investigation conducted by the Police will not result in collection of materials against a Police Officer correctly. On the other hand, in the case of an investigation under Section 156(3) of the Code, the Police is having the power to file final report under Section 173(2) of the Code. Even if a refer report is filed under Section 173(2) of the Code, the remedies of the complainant to proceed further will not

be exhausted. The complainant can file a protest complaint or to seek the assistance of the Court for further investigation under Section 173(8) of the Code. In other words, even after filing the final report by the Police, the complainant is having options to get his grievance redressed through the Court of law. However, in the case of investigation under Section 202 of the Code, the remedies of the complainant will be foreclosed, as the materials collected during the course of investigation will form part of the enquiry under Section 202 of the Code. The Court is also not empowered to go back to the pre-cognizance stage, even if a report negating the case of the complainant is submitted by the Police officer to save his colleague or subordinate, as Section 202 of the Code applies at post-cognizance stage. Therefore, even the

powers of the Court will be restricted once a report is received under Section 202 of the Code, as the direction for investigation under Section 202 of the Code is for the purpose of determining “existence of sufficient ground to proceed”. That may be the reason why Rules Committee of the High Court decided to incorporate Rule 26 in the Rules that a complaint against a Police Officer shall not be referred to by a Magistrate under Section 202 of the Code to any person other than a Magistrate subordinate to him. The Rules Committee of the High Court was well aware of the two provisions empowering the Magistrate to forward the complaint to the Police for investigation, which are Sections 156(3) and 202(1) of the Code. Even then, the Rules Committee excluded Section 156(3) of the Code from the purview of Rule 26 of the Rules. The said

exclusion seems to be not accidental or due to oversight, but was deliberate. Since the provisions of Rule 26 exclude Section 156(3) of the Code from the purview of Rule 26, the powers conferred by the Statute on the Magistrate under Section 156(3) of the Code cannot be taken away under the said Rule. It is true that the heading of Rule 26 is a little confusing. However, the provisions of Rule 26 are clear and unambiguous that the said provisions are applicable only to the investigation by the Police under Section 202(1) of the Code. When the provisions are clear and unambiguous, no other interpretation is permissible. Therefore, if any restriction is imposed, in the absence of any provision in the rules, on the powers of the Magistrate under Section 156(3) of the Code, that will tantamount to curtailing the powers conferred by the statute without any

sanction of law, which is impermissible. The above aspects were not brought to the notice of the learned Judge when **Superintendent of Police, CBI v. State of Kerala** (supra) was decided and consequently, the learned Judge had no occasion to go through the said aspects. The learned Judge after considering the facts and circumstances of the case held in Paragraph 29 thus:-

“In view of the peculiar facts and circumstances of the case, I am of the view that the learned Magistrate went wrong in forwarding the complaint under Section 156(3) of the Code of Criminal Procedure mechanically.”

Thus, it is clear from the above passage that the said case was decided on the peculiar facts and circumstances of the case.

12. The upshot of the above discussion is that the bar

under Rule 26 of the Rules is not applicable in forwarding the complaint to the Police under Section 156(3) of the Code. Therefore, there is no restriction on the powers of the Magistrate in forwarding the complaint to the police for investigation and report under Section 156(3) of the Code even if the complaint is against a police officer. In the said circumstances, the argument in this regard advanced by the learned counsel for the revision petitioner fails.

13. Even as per the allegations, the forgery was committed before the production of the document before the Court. A constitution Bench of the Apex Court in **Iqbal Singh Marwah and another v. Meenakshi Marwah and another** (AIR 2005 SC 2119) held in paragraph No.25 thus:-

“Section 195(1)(b)(iii) Cr.P.C. 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.”

It is clear from the above decision of the Apex Court that the bar under Section 195(1)(b)(ii) of the Code is not applicable to the case in hand as the forgery was allegedly committed when the document was not in *custodia legis*.

14. No other argument has been advanced before me to assail the order impugned.

15. Having gone through the order impugned, I find no reason to hold that the order impugned suffers from any infirmity, warranting interference by this Court.

In the result, this revision petition stands dismissed.

Sd/-

**B.SUDHEENDRA KUMAR,
JUDGE**

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PA to Judge