

Kerala High Court

C.K. Moidoo And Ors. vs Vayyaprath Kunnath Mayan And Anr. on 4 August, 1983

Equivalent citations: 1984 CriLJ 322

Author: U Bhat

Bench: U Bhat

ORDER U.L. Bhat, J.

1. This is a petition filed under Section 482 of the Code of Criminal Procedure (for short the Code) to quash the proceedings in C. C. 191 of 1982 on the file of the Additional Judicial Magistrate of the First Class, Tellicherry.

2. The petition has been filed by accused Nos. 1, 2, 4 and 5. That is because the court, after recording the sworn statement of the complainant, issued process only against these persons and excluded accused Nos. 3 and 6.

3. The parties are Muslims, It appears, accused 3 and 6 were married on 26-3-82. The complaint rests on the allegation that the bride, the third accused, was aged only 14 years at the time of the marriage. Accused 1 and 2 are the parents of the bride. Accused 4 and 5 are the brother and sister-in-law of the first accused. The learned Magistrate took cognizance against accused 1, 2, 4 and 5 that is, excluding the newly wedded couple, merely on the basis of the complaint and the sworn statement. This is challenged as contrary to the mandatory provisions in Section 10 of the Child Marriage Restraint Act (XIX of 1929) (for short the Act).

4. Complaint to a Magistrate is dealt with in Chapter XV of the Code. Section 200 requires the Magistrate taking cognizance of an offence on complaint to examine upon oath the complainant and the witnesses present, if any. Of course, it is open to him to decline to take cognizance for appropriate reasons. In appropriate cases, it is open to the Magistrate to take cognizance on the basis of materials presented under Section 200 of the Code and issue process under Section 204 of the Code. Where he decides to postpone issue of process, he may conduct an inquiry into the case himself or direct an investigation to be made by a Police Officer or by such other person as he deems fit for the purpose of deciding whether or not there are sufficient grounds for proceeding. Such decision rests in the judicial discretion of the Magistrate. Evidently, the learned Magistrate thought that it was unnecessary to conduct an enquiry or arrange an investigation under Section 202 of the Code. That was why he issued process to the petitioners without conducting an inquiry or directing investigation to be made by the appropriate authority. Evidently, the learned Magistrate overlooked the provisions of Section 10 of the Act.

5. The Act has been enacted to restrain the solemnisation of child marriages. The expression "child" is defined in Section 2(a) of the Act. Sections 3 to 6 provide the punishments to be imposed on various types of offenders under the Act. Offences under the Act are to be treated as cognizable offences under the Code for certain purposes, as seen provided in Section 7 of the Act. The jurisdiction of the Magistrate is dealt with in Section 8. Limitation for taking cognizance is laid down in Section 9.

6. Section 10 reads thus:

10 Preliminary enquiries into offences. -. Any Court, on receipt of a complaint of an offence of which it is authorised to take cognizance, shall, unless it dismisses the complaint under Section 203 of the Code of Criminal Procedure, 1898 (V of 1898), either itself make an inquiry under Section 202 of that Code or direct a Magistrate subordinate to it to make such inquiry.

7. Once a complaint is preferred alleging an offence under the provisions of the Act before the Magistrate competent to take cognizance, the Magistrate has to proceed with the complaint in accordance with the provisions of the Code and in the light of Section 10 of the Act. It is, of course, open to him to refrain from taking cognizance on the materials before him. It is open to him to take cognizance and issue process or otherwise deal with the matter under law. But where he does not choose to dismiss the complaint under Section 203 of the Code after receiving the same, he has a statutory duty to make an inquiry himself under Section 202 of the Code or direct a Magistrate subordinate to his court to make such inquiry. Section 10 being a special provision in relation to complaints in regard to offences under the Act, it has an overriding effect on the provisions of Section 202 of the Code which may be in conflict with it. There is a conflict because under the scheme of Chapter XV of the Code, it is open to a Magistrate to issue process even without conducting an inquiry or directing an investigation. Under Section 10 of the Act, the Magistrate cannot issue process unless he himself conducts an inquiry under Section 202 or direct a subordinate Magistrate to make such an inquiry. The extent of the conflict, the provisions of Section 10 of the Act will override the provisions of Chapter XV of the Code.

8. The provisions in Section 10 of the Act are intended to safeguard the interests of persons against whom complaints of violation of the provisions of the Act may be made in courts. Every other day a marriage may be celebrated in a place. It would be easy for some persons to resent the marriage or resent the persons involved with the marriage and rush to court alleging that the bride married is a child. Naturally, the complainant will be prepared to repeat the allegations in his sworn statement to be recorded by the court. If that alone is sufficient to enable the Magistrate to take cognizance, there is every danger of the process of court being abused, and innocent persons being harassed. That is why Section 10 of the Act insists that there should be an inquiry - not even an investigation is sufficient - by the Magistrate himself or by a subordinate Magistrate into the allegations. If such an enquiry discloses sufficient grounds for proceedings, certainly it is open to the Magistrate to proceed. If such an enquiry does not disclose sufficient grounds for proceeding, the Magistrate will naturally decline to issue process and thereby persons against whom there is no possibility of evidence being marshalled would be protected from being harassed and humiliated.

9. The Magistrate in this case did not conduct and did not purport to conduct an inquiry either by himself or by a subordinate Magistrate. Even without doing that, he has taken cognizance against some persons against whom the allegations are levelled. This is certainly illegal as it is in contravention of the mandatory provisions in Section 10 of the Act. The impugned proceedings are therefore, quashed.