IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE V. RAMKUMAR

TUESDAY, THE 20TH JULY 2010/29TH ASHADHA 1932

Crl. MC. No. 2125 of 2010

CRIME NO. 446 OF 2010 OF PANANGAD POLICE STATION.

PETITIONER(S) : ACCUSED

RAMESAN, S/O GOPALAN, AGED 42,
NIRAVATH HOUSE, MARADU, ERNAKULAM.

BY ADV. SHERRY J THOMAS

RESPONDENT(S): DEFACTO COMPLAINANT

STATE OF KERALA REPRESENTED BY SUB INSPECTOR OF POLICE, PANANGAD POLICE STATION, THROUGH PUBLIC PROSECUTER, HIGH COURT OF KERALA.

PUBLIC PROSECUTER SRI. C. S. HRITHICK

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 15/07/2010, THE COURT ON 20-07-2010 PASSED THE FOLOWING:

V. RAMKUMAR, J.

Crl. MC. No. 2125 of 2010

Dated this the 20th day of July, 2010

ORDER

In this Petition filed under Sec. 482 Cr. P.C. the Petitioner who is the Accused in Crime No. 446 of 2010 of Panangad Police station seeks to quash the proceedings before the Court of the Addl. Chief Judicial Magistrate, (ACJM for short), Ernakulam, on the ground that the said proceedings have been commenced pursuant to Annexure – A1 notice issued by the Sub Inspector without any authority.

2. The interesting questions which arise for judicial resolution in this case are:

a) What is a "petty offence" ? ?

b) Is the Officer- in charge of a Police Station entitled to summon an Accused person to a criminal court to answer a charge against him in a case treated as a petty case?

THE BACKGROND FACTS

3. The facts leading to the filing of this Petition can be summarized as follows:-

Summarized as follows:-

The petitioner aged 42 years and residing at Maradu near Vyttila, Ernakulam claims to be the sole breadwinner of his family. He is running a small shop near Maradu junction where he is doing repair of electronic goods. In the night of 23-2-2010 after closing his shop the petitioner was rushing home on his scooter bearing Reg. No. KL 39-7304 along the Kundannur-Petta road. The time was 10.20 in the night. The Sub Inspector of Police, Panangad was conducting a routine check of vehicles near Maradu junction. It was aftger passing through the above checking site that the petitioner reached home. According to the petitioner after an hour of his reaching home the police came there and took him into custody. But according to the Sub Inspector of Police, the petitioner who came on his scooter in a rash and negligent manner after consuming alcohol did not stop the two-wheeler when the A.S.I signaled him to stop and since the petitioner drove away the vehicle disregarding and disobeying the directions of the A.S.I. signaled him to stop and since the petitioner drove away the vehicle disregarding and disobeying the directions of the A.S.I. and, he was taken into custody. It is the cases of the petitioner that eventhough he pleaded that he was innocent and he had not consumed alcohol, his entreaties fell on deaf ears and he was taken to the police station and a case registered against him as Crime No. 446 of 2010. He was, thereafter, released on bail with two sureties. The petitioner was served with Annexure – A1 Notice calling upon him to appear before the Court of the ACJM AT 11 a.m. on 10-5-2010. The F.I.R. which was dispatched to the Magistrate reached the Court of the ACJM, Ernakulam on 25-3-2010. Subsequently, the S.I. Panangad sent a report to the ACJM to the effect that the allegation in the F.I.R. that the accused had consumed alcohol was mistakenly incorporated in the F.I.R. On 24-6-

2010 the Sub Inspector filed a charge-sheet before the ACJM against the accused alleging offences under Sections 279 I.P.C. and 132 read with 179 of the Motor Vehicles Act, 1988 ("the M.V.Act" for short). Along with the charge, the Sub Inspector produced the served copy of Annexure A1 notice issued to the accused. A report was also submitted along with the charge to the effect that even though the Sub Inspector had issued a notice to the accused to appear before Court on 10-5-2010, due to certain urgent duties he could not file the charge-sheet in time,. The learned Magistrate took the case on file as S.T. 5622 of 2010 for the aforementioned offences and has posted the case to 26-7-2010 for the appearance of the accused. It was in the meanwhile that the petitioner filed the present petition before this Court.

4. I heard the learned counsel for the petitioner and the learned Public Prosecutor.

5. Since this Court was prima facie of the view that the Sub Inspector had absolutely no authority to summon an accused person to the Magistrate's Court, the Sub Inspector was directed to appear before this Court to reveal his authority, if any, to issue such a notice. The Sub Inspector appeared and placed reliance upon a Circular issued by the Police Department as Circular No. 11/1972 to justify his action:-

JUDICIAL RATIOCINATION

6. Annexure A1 notice in vernacular Malayalam and its English translation are as follows:-

NOTICE

To

രമേശൻ, Age 42/10

S/o. ഗോപാലൻ,

നിരവത്ത് (H), മരട്

എറണാകുളം

താങ്കൾ 23-3-2010 തിയതി 10.20 P.M. മണിക്ക് Maradu എന്ന സ്ഥലത്ത് വെച്ച് താഴെ പറയുന്ന കുറ്റം ചെയ്തതായി കാണപ്പെട്ടിരിക്കുന്നതിനാൽ ടി പെറ്റിക്കേസിന് സമാധാനം പറയുന്നതിനായി താങ്കൾ 10-5-2010 തിയതി 11 മണിക്ക് എറണാകുളം-- കോടതി മുൻപാകെ ഹാജരാകേണ്ടതാണ്.

കുറ്റം :

Cr.446/10

U/s.289 I.P.C. & 132 (1) read with Sec. 179 M.V. Act

Signature of Ramesan

(Signature)
S.I. Panangad

TRANSLATION OF ANNEXURE A1

To,

Remesan, age42/10
S/o Gopalan
Niravath (H), Maradu
Ernakulam.

It has been made to appear that you have committed the offences mentioned below on 23-3-2010 at 10.20 p.m. at Maradu. You are directed to appear before the ACJM Court, Ernakulam at 11 O' clock on 10-5-2010 to answer the charge in the aforesaid petty case.

Offence:- U/s. 279 I.P.C. & 132 (1) r/w 179 M.C. Act.

Cr. 446/10

Signature of Remesan (Signature)
S. I. Panangad.

7. It is shocking to find that a Station House Officer has dared to issue notice to the accused summoning him to the Magistrate's Court to answer a charge for the offences indicated therein. Still more startling is the conduct of the Sub Inspector in taking umbrage at the proceedings taken against him and coming out with a Circular having absolutely no relevance, application or sustainability. The Circular relied on by him reads as follows:-

Circular No. 12/72

No D2-78326/70 Dated 08-02-72

Sub: Notice to accused concerned in petty offence to appear before court on a stipulated date – Issuing of by police to expedite disposal of cases in courts.

On the initiative of this department the Dist. Magistrate (Judicial), Trivandrum sent round a proposal to all the Msgistrates in Trivandrum District requesting them to consider the feasibility of adopting the procedure of issuing notices by Police to the accused concerned in petty offences as and when such offences were detected by them, so that the accused might appear before the courts concerned on a stipulated date. If the Police file the case In the court sufficiently in advance of the date fixed, it will enable the Magistrate to dispose of most of the petty cases on the first posting date itself.

The District Magistrate, Trivandrum convened a conference of Police Officers and Magistrates in the Trivandrum City on 19-03-1971 in his Chamber and held

discussions in the matter. The procedure suggested as accepted by all who attended the conference.

In all cases of this nature, where the accused would willingly like to have a quick disposal of the case against them and in such other cases where it is feasible to do so, the Police Officers who detect the cases could get notices served on the accused for their pre-arranged dates before the concerned Magistrates. Police Officers could also produce the notices along with petty charge reports before the Magistrates mentioning about this fact in the reports. Sufficient time can be allowed in the notices for appearance so that the Magistrates could post the cases to the dates fixed in the notices. It is also suggested that not more than 25 cases may be got posted or taken to the Magistrate on any one date.

CP/SPs of other Districts will make similar reciprocal arrangements in their Districts through their Dist. Magistrates (Judicial) to see that the procedure accepted by the Magistracy of Trivandrum could be followed there also.

8. In the first place, the above Circular, even if it survives the new Code (the Code of Criminal Procedure, 1973), applies only To "petty offences". Secondly, it was an arrangement made by means of administrative instructions in a conference convened by the Chief Judicial Magistrate (District Magistrate (Judicial) of Trivandrum, for expeditious disposal of "petty offences" by the Magistrates in Trivandrum District only. Thirdly, such executive instructions which are contrary to the provisions of law cannot legalise the procedure given there under. The above Circular was issued by the Police Department at a time when Executive Magistrates were invested with judicial powers as well. But under the present Code there is a clear separation of the Judiciary from the Executive. No executive instruction can take away or abridge the power of the Magistrate to issue process for summoning an accused person to answer a charge for a criminal offence alleged to have been committed by him. The said power of the Magistrate under Sec. 204 Cr.P.C. generally and under Sec. 206 (1) in the case of petty offences cannot be delegated by him to the police nor can any police officer arrogate to himself the said power which is exclusively vested in the Magistrate. In **Ajay Kumar Bhuyan v. State of Orissa – 2003 (1) SCC 707** the Apex Court repelled a plea urged on behalf of the State of Orissa that administrative instructions issued by the State Government under the Orissa Police Manual, 1940 were having statutory force. It was held that they were only authoritative guides for the officers of the Police Department and could not be termed as statutory rules constituting "existing law" within the earning of Article 313 of the Constitution of India. **In Punjab Water Supply and**

Sewerage Board v Ranjodh Singh – AIR 2007 SC 1082 the Supreme Court observed as follows:-

> *"Any departmental letter or executive instruction cannot prevail over statutory rule and constitutional provisions."*

It was submitted before me that the Tripunithura Wing of the City Traffic Police Station, Kochi, is also issuing similar notices and the matter is pending consideration in a Writ Petition before this Court. Dealing with a notice issued by the Sub Inspector of Police, City Traffic Police Station, Thiruvananthapuram, similar to Annexure-A1 notice, a learned Judge of this Court (M.Sasidharan Nambiar, J.) observed in **Crl.M.C. 711 of 2010** as follows:-

> *"4. Annexure-A2 is a notice issued by the Sub Inspector directing the petitioner to appear before the Magistrate. If petitioner has committed an offence under Section 279 of Indian Penal Code, the learned Magistrate has to take cognizance of the offence only on a final report submitted by the police. If cognizance is taken,, it is for the Magistrate to issue su mmons to the petitioner. The Sub Inspector is not to direct the petitioner to appear before the Magistrate, even before taking cognizance. Even after a final report is submitted, it is for the Magistrate to decide whether cognizance is to be taken or not and even if to be taken, for what al offences.*
>
> *In such circumstance, petition is allowed. Annexure-A2 notice is quashed. If the learned Magistrate takes cognizance, and summons is issued, petitioner is at liberty to raise all the contentions before the Court."*

I am in respectful agreement with the above observations and conclusion. Annexure A1 notice issued by the Sub Inspector of Police was, therefore, clearly illegal and unauthorized. It would not have been objectionable if the Sub Inspector were to direct the petitioner to appear before the Court as and when he received summons from the Court.

9. I now proceed to consider the question as to which all cases fall under the category of "petty offences". The police charge against the petitioner in this case is for offences punishable under Secs. 279 I.P.C. and 179 of the M.V.Act has been incorporated for the alleged contravention of Sec. 132 of the M.V.Act. Sec. 132 enjoins the driver of a motor vehicle to stop the vehicle when required to do so by a police officer not below the rank of a Sub Inspector in uniform. The offence under Sec. 179 of the M.V.Act is punishable with a fine of Rs. 500/-. The offence under Sec. 279 I.P.C. is punishable with imprisonment up to six months or with fine which may extend to Rs. 1,000/- or both. Sec. 206 Cr.P.C.reads as follows:-

"206. Special summons in case of petty offence:- *(1) If, in the opinion of a Magistrate taking cognizance of a petty offence, the case may be summarily disposed of under Sec. 260 [or section*

261], the Magistrate shall,except where he is, for reasons to be recorded in writing of a contrary opinion, issue summons to the accused requiring him either to appear in person or by pleader before the Magistrate, to transmit before the specified date, by post or by messenger to the Magistrate, the said plea in writing and the amount of fine specified in the summons or if he desires to appear by pleader and to plead guilty to the charge through such pleader,to authorize, in writing, the pleader to plead guilty to the charge on his behalf and to pay the fine through such pleader:

Provided that the amount of the fine specified in such summons shall not exceed one thousand rupees.

*2. For the purposes of this section. "**petty offence**"means any offence punishable only with fine not exceeding one thousand rupees, but does not include any offence so punishable under the Motor Vehicles Act, 1939 (4 of 1939), or under any other law which provides for convicting the accused persons in his absence on a plea of guilty."*

3. The State Government may,by notification, specially empower any Magistrate to exercise the powers conferred by sub-section (1) in relation to any offence which is compoundable under section 320 or any offence punishable with imprisonment for a term not exceeding three months, or with fine, or with both where the Magistrate is of opinion that, having regard to the facts and circumstances of the case, the imposition of fine only would meet the ends of justice].

The special summons to be issued under Sec. 206 (1) Cr.P.C. has been prescribed in Form No. 30 of the 2nd Schedule to the Cr. P.C. The said Form is given below:-

FORM NO. 30

SPECIAL SUMMONS TO A PERSON ACCUSED OF PETTY OFFENCE

(See section 206)

To…….(Name of the accused)

Of……..(address)

WHEREAS your attendance is necessary to anser a charge of a petty offence……(state shortly the offence charged), you are hereby required to appear in person (or by pleader) before……(Magistrate) of ……..on

the……..day of……20……., or if you desire to plead guilty to the charge without appearing before the Magistrate, to transmit before the aforesaid date the plea of guilty in writing and the sum of ……..rupees as fine, or if you desire to appear by pleader and to plead guilty through such pleader, to authorize such pleader in writing to make such a plea of guilty on your behalf and to pay the fine through such pleader. Herein fail or not.

Dated, this……..day of……..20…….

(Seal of the Court) (Signature)

(Note – The amount of fine specified in this summons shall not exceed one hundred rupees.)

Sub sec. (1) of Sec. 260 enumerates the class of cases which could be tried summarily by the Magistrates. The said sub-Section reads as follows:-

"260. **Power to try summarily**:- (1) Notwithstanding anything contained in this Code –

a) any Chief Judicial Magistrate;

b) any Metropolitan Magistrate;

c) any Magistrate of the first class specially empowered in this behalf by the High Court

may, if he thinks fit, try in a summary way all or any of the following offences:-

i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

ii) theft, under section 379, section 380 or section 381 of the Indian Penal Code (45 of 1890), where the value of property stolen does not exceed two thousand rupees;

iii) receiving or retaining stolen property, under section 411 of the Indian Penal Code (45 of 1860), where the value of property does not exceed two thousand rupees;

iv) assisting in the concealment or disposal of stolen property, under section 414 of the Indian Penal Code (45 of 1860), where the value of such property does not exceed two thousand rupees;

v) offences under sections 454 and 456 of the Indian Penal Code (45 of 1860)

vi) insult with intent to provoked a breach of the peace, under section 504 and criminal intimidation punishable with imprisonment for a term which may extend to two years, or with fine, or with both under section 506 of the Indian Penal Code (45 of 1860)

vii) abetment of any of the foregoing offences;

viii) an attempt to commit any of the foregoing offences, when such attempt is an offence;

ix) any offence constituted by an act in respect of which a complaint may be made under Section 20 of the Cattle Trespass Act, 1871 (1 of 1871)."

The position which emerges on a combined reading of Sections 206 and 260 Cr.P.C. is that while the Magistrates can resort to the summary procedure for trial of those offence which are enumerated under Section 260 (1) Cr. P.C., a special summons in

Form 30 can be issued under Sec. 206 (1) Cr. P.C. giving the option to the accused to plead guiltyin absentia and to transmit through post or through messenger the fine amount shown in the summons only in the case of "petty offences" as defined under Section 206 (2) Cr.P.C. No doubt, the State Government can under Sec. 206 (3) Cr.P.C. specially empower any Magistrate to follow the "special summons procedure" under Sec. 206 (1) Cr.P.C. in relation to any offence which is compoundable under Sec. 320 Cr. P.C. or which is punishable with imprisonment upto three months. No notification by the State Government under Sec. 206 (3) Cr. P.C. appears to have been issued. No notification was brought to my notice as well. Thus, "petty offence" within the meaning of Section 206 Cr.P.C. is an offence which is punishable **only** with fine not exceeding Rs. 1,000/- but does not include any offence **so punishable** under the Motor Vehicles Act. If so, Section 279 I.P.C. which is a cognizable offence and which is not an offence punishable only with fine and Section 179 of the M.V. Act are not "petty offences". Even if Sec. 179 of the M.V. Act were to be treated as a petty offence, when the case involved Sec. 279 I.P.C. as well, then drawing the analogy from Sec. 155 (4) Cr. P.C. the present case could not be treated as "a petty case" involving a "petty offence" only. Hence, even assuming that the Circular relied by the Sub Inspector could be treated as valid, the same cannot apply to the facts of this case. By and large, all petty offences are non-cognizable offences and they ordinarily do not originate with the registration of a case under Sec. 157 Cr. P.C. and, therefore, cannot end in a police report.

10. The result of the foregoing discussion is that Annexure A1 notice issued by the sub Inspector is without any authority and is liable to be ignored by the petitioner. It is pertinent to note that it was even without filing the charge sheet before the Court of the ACJM that the Sub Inspector had summoned the petitioner to the Court of the ACJM. Even the Magistrate could not have issued summons to the accused at the pre-cognizance stage. By issuing Anexure – A1 notice the Sub Inspector was usurping the powers of the Court. It is rather strange that the learned Magistrate even after taking

note of the illegal notice issued by the Sub Inspector (Vide the letter dated 24-6-2010 of the Magistrate) has not chosen to make any comments about the invalidity of the said notice.

Is there any unholy practice of allowing the Police to serve notices to the offenders on the spot asking them to appear before the Magistrate concerned on a specified day to suit the convenience of the Magistrate in the so called "petty offences" ?

Was the Magistrate surrendering his powers to the police so as to enable the police to arrogate to themselves the authority of the Magistrate ?

Was the Sub Inspector, in order to avoid the wrath of his superiors, achieving the unwritten target of registering the minimum number of cases without caring for the prey he chanced to stumble upon ?

If the Sub Inspector was punctiliously obeying the orders of his superiors, then it is high time that the Police Commissioners/ Superintendents of Police discontinued such unwholesome practice of compelling their subordinates to book a fixed minimum number of cases regardless of the hardship, annoyance or discomfort to the users of motor vehicles and the traveling public. The penal provisions in the Indian Penal Code, Motor Vehicles Act and allied legislations are not intended to persecute persons for every innocent violation but to bring to justice daring and/ or incorrigible offenders. It is irony that while hard core offenders in respect of motor vehicles get away scot free even without detection, those who fall in the police dragnet are small flies like the Petitioner.

11. Since the ACJM has already taken cognizance of the offences, I leave it to the learned Magistrate to deal with the matter without forgetting that the Petitioner who has going home after closing his stop would not have anticipated such a bitter experience in his life and that he has suffered enough.

12. This Crl. M.C is disposed of as above.

It is desirable that the State Government issue a notification under section 206 (3) Cr. P.C. empowering all Judicial Magistrates of the first class to summarily dispose of the categories of cases specified therein through "the Special Summons Procedure" under Sec. 206 (1) Cr.P.C. so that persons accused of such categories of cases for notification may include offences which are compoundable under Section 200 of the Motor Vehicles Act, 1988 as well.

Copies of this judgment shall be forwarded to the Transport Secretary as well as Home Secretary for appropriate measures, if they deem fit to do so.

Dated this the 20th day of July, 2010.

Sd/- **V.RAMKUMAR, JUDGE.**

Ani/

/true copy/

P.S. to Judge