

## CASE ANALYSIS: THIRUMALI KUMAR V. STATE REPRESENTED BY S.I. OF POLICE<sup>i</sup>

*Written By Aastha Pitale*

*2nd Year BBA LLB Student, Symbiosis Law School, Pune, India*

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### ABSTRACT

The rule of evidence prohibiting judges from using their own ‘personal knowledge’ has been a well-established one by virtue of a catena of English judgements and precedents dating as far back as *R v. Sutton*<sup>ii</sup> in 1816. This rule ties in with the Doctrine of Judicial notice as well. With this analysis, the author seeks to provide an insight into the rationale behind the judgement given by the Kerala High Court through a systematic and step-wise analysis. The conduct of a magistrate came under scrutiny by a higher court with regards to their use of a newspaper publication to issue an order- which had no bearing on the merits of the case- but arguably aided law enforcement authorities to bring the absconding before the Court. The question before the court was whether such conduct was to be appreciated or to be rejected and whether the information relied on even constituted as personal knowledge. The rationale of the High Court in this case has been discussed in further detail.

**Keywords:** The Code of Criminal Procedure, Doctrine of Judicial Notice, Personal Knowledge of Judge, Arrest Warrant, Case Analysis

## BRIEF FACTS

The petitioner in the given case was an accused involved in several criminal cases for the commission of offences of Dacoity, House-breaking, Theft and more. He had been absconding after being enlarged on bail. Despite repeated warrants issued for his arrest under S.82 and S. 83 of The Criminal Procedure Code (hereafter, CrPC), it was to no avail as police reports concluded that absconder could not be found. The Magistrate before whom the cases were pending came across an article in the *Malayala Manorama Daily* wherein it was reported that the accused was now living in a village in Tamil Nadu and a photograph of himself was also attached. As a result, the magistrate issued a warrant against the accused to be executed by the City Police Commissioner of Ernakulam, aided by Tamil Nadu Police. The accused was arrested and brought before the Magistrate for trial. The Magistrate denied the accused's application for bail. Accused moved his bail application before the Sessions court. The Sessions judge did not grant bail to him; however, criticized the Magistrate's decision to issue a warrant for arrest based on information published in a local news source. The case was brought before the High Court wherein the Court was to decide whether the Sessions Judge was justified in criticizing the Magistrate for having issued an arrest warrant against the accused based on newspaper reports.

## ISSUES

- I. Whether the Magistrate has power to issue warrant for arrest of an absconding accused based on local newspaper reports.
- II. Whether the information gathered by the Magistrate from a public news source constitutes as personal knowledge.

## PROSECUTION

The Sessions judge held the position that the conduct of the Magistrate on the basis of such extra-judicial information could not be appreciated or justified due the simple reasoning that the Court itself could not undertake the role of the 'prosecuting agency' and that it was the role

of the Police or other suitable authority to collect such information and produce reports to the court.

## **DEFENCE**

There is nothing illegal or improper in the conduct of the Magistrate as his conduct fell within the provisions of law and given the context that the accused was involved in crimes of serious gravity and the fact that he was untraceable for more than half a decade despite the proceedings undertaken under the Code of Criminal Procedure.

## **AUTHORITIES CITED**

- I. Cases:** Kunhunnu Nair v. State of Kerala (1961) KLT 463
- II. Statutes:**
  - The Criminal Procedure Code, 1973- S.82(1), S.82 (4), S. 83, S.44, S.70, S.72, S.73, S.74, S.77, S.78, S.79, S. 190
  - The Indian Penal Code, 1860- S. 454, S.380, S.402, S.34, S.174-A

## **DECISION/ JUDGEMENT**

The Magistrate has power to issue necessary order or directions to issue a Warrant for arrest of an accused on the basis of information collected from newspaper reports to ensure the presence of the accused before the court for fair trial.

## **ANALYSIS**

### ***I. Validity of Proclamation***

S.82 (1) of the CrPC provides for the proclamation of an accused who is absconding. If a court finds that despite issuing a warrant against an accused in a case, the accused continually conceals himself/herself and is absconding, making the execution of said warrant impossible,

the court may issue a proclamation in writing which requires the accused to appear at a specified place and time within thirty days of issuing said proclamation.

S.82 (4) provides that if a proclamation is published under S.82(1) in respect of certain specified offences punishable according to the Indian Penal Code and in case the accused does not appear at the said place and time, the Court has the prerogative to pronounce him as a proclaimed offender make a suitable declaration after any inquiry the court deems fit.

In the given case, a proclamation under S.82(1) was issued and given that the accused was involved in a case where he had allegedly committed the offence specified under S.402 of the IPC, which was also one of the offences specified under S.82(4) of the CrPC, S. 82(4) also applied. Therefore, the warrants issued by the Magistrate judge were justified by the provisions of the law.

S.174 A of the Indian Penal Code provides that in case there is nonappearance in response to proclamations made under S. 82(1) and making him a proclaimed offender under S. 82(4) of the CrPC, the accused faced punishment by imprisonment for up to seven years along with fine.

## ***II. Route of Issuing Arrest Warrant***

S.73 of the Code of Criminal Procedure provides that The Magistrate has the power to direct any person within the local jurisdiction to ensure the arrest of an escaped convict, a proclaimed offender or any person who is accused of a non-bailable offence and is evading arrest.

In the given case, the warrant was routed via the City Police Commissioner of Ernakulam (a city within the jurisdiction of the magistrate). Taking these facts into consideration, there was no error in the magistrate's decision to direct the City Police Commissioner to execute the arrest warrant. The rank of the police officer was immaterial.

As far as the involvement of the Tamil Nadu police (as mentioned in the order issued by the Magistrate) was concerned, in *Kunhunni Nair v. State of Kerala*<sup>iii</sup>, where the facts were such that a Judicial magistrate of the first class, Jaipur city forwarded a warrant to the Secretary, Government of Kerala who further forwarded it to the Sub-Magistrate, Mukundapuram for execution, it was held that even though S. 83 (1) requires the warrant to be forwarded to the Magistrate within local limits of whose jurisdiction it is to be executed, it will however, still not impact the validity of warrant or jurisdiction of the Magistrate of Mukundapuram and his

power to execute the warrant as it was held that S.83 (1) is merely a provision which allows the Magistrate to forward a warrant to be executed to authorities, within the local limits of whose jurisdiction it is to be executed, instead of directing the warrant to a police officer and it does not specify the route or channel the warrant may take.

### **III. Source of Information**

It is an established rule that *a Judge cannot use his personal knowledge of facts in a judgement*<sup>iv</sup>. This is necessary to prevent bias from creeping in the decisions of the otherwise impartial role a judge must fulfil while giving his judgement or decision. However, in the given case, it must be ascertained whether knowledge of the accused's position constitutes as personal knowledge of the Magistrate and whether said knowledge has negatively affected the decision of the judge or has instead played a pivotal role in placing the absconding accused before the court for a fair trial.

The scope of power under S.190 of the CrPC is very wide. It provides that a Judicial Magistrate may take cognizance (and subsequent action) of an offence in the following cases-

- 1) When he receives complaint of facts constituting said offence; or
- 2) When he receives an official police report of said facts; or
- 3) When he receives information from any person who may not be a police officer; or
- 4) When it comes to his own personal knowledge that said offence has been committed.

Despite repeated issuance of warrants for arrest, the presence of the accused was not secured. It is clear in this case that the Magistrate had issued a warrant for arrest of the accused who was a proclaimed offender and had been absconding for more than half a decade. The purpose of the said warrant was to merely secure the presence of the accused before the Magistrate. The Magistrate did not need to rely on the information supplied by the police and in fact the range of information upon which the Magistrate was empowered to take action was quite diverse. The decision to act and give direction as a result of the information that Magistrate came across in a daily newspaper, involved no adjudicatory processes as the newspaper report had no bearing on the guilt of the accused and did not affect the Magistrate's process of arriving at a decision regarding a disputed question of fact in the case.

Moreover, the claim that the information gathered by the Magistrate constitutes as personal knowledge would be faulty as said information was present in a widely available public newspaper. In fact, if the Magistrate had not acted upon coming across such information and acted as a “helpless authority” dependent on the police reports which failed to find the accused’s location, it would have been in detriment to the administration of justice and people’s faith in Courts.

## CONCLUSION

The limit on the use of personal knowledge is when such knowledge is used to decide upon the merits of the case. It is the duty of the Magistrate to take necessary action for ensuring the presence of the accused before Court and to do so, any source can be relied on by him, including newspaper publications.

## ENDNOTES

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<sup>i</sup> 2010 CriLJ 3488: ILR 2010(1) Kerala 497: 2010(1) KLT 579

<sup>ii</sup> (1816), 4 M. & S. 532: 105 E.R. 931

<sup>iii</sup> (1961) KLT 463

<sup>iv</sup> R.V. Raveendran, *Rendering Judgements—Some Basics*, (2009) 10 SCC J-1