

A K. SUDHAKARAN

v.

STATE OF KERALA

(Criminal Appeal No. 452 of 2002)

B FEBRUARY 5, 2009

[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]

C *Code of Criminal Procedure, 1973:*

ss.340, 341(2) – Suo motu proceedings – Complaint as required under s.340 not filed by any person – Proceedings initiated suo motu by High Court – Revision – Maintainability of – Held: Not maintainable.

D The issue related to the scope and ambit of s.341
Cr.P.C. The High Court examined the question as to
whether a person who had not filed an application as
E required under s.340 Cr.P.C. could file an appeal under
s.341 Cr.P.C. The High Court held that a person who had
not filed complaint, but the proceedings were initiated *suo*
motu by the Court, could not file an appeal. However it
held that a revision petition was maintainable. The latter
F part of the revision petition order relating to
maintainability before the High Court is challenged before
this Court.

Partly allowing the appeal, the Court

G HELD: A bare reading of the provisions makes it
clear that an appeal under s. 341 Cr.P.C. can be filed by
any person on whose application the Court other than
the High Court refused to make a complaint under sub-
section (1) or sub-section (2) of s.340. The other person

who can file an appeal is one against whom such a complaint has been made by such Court. Undisputedly, the present case was one where the initiation was suo motu by the High Court. Sub-section (2) of s.341 states that an order under s.341 and subject to any such order, an order under s.340 shall be final and shall not be subject to revision. There is thus legal embargo created on filing a revision in respect of an order under s.340 which cannot be the subject matter of challenge. Undisputedly, what was challenged before the High Court was an order under s.340 by the State. The High Court was justified in holding that no appeal can be filed by the State under s.341 of the Code. But its conclusions about maintainability of the revision are indefensible in view of the clear language of sub-section (2) of s.341. It appears that the High Court has made certain observations against the officers which do not warrant interference. Therefore, the impugned order of the High Court regarding the maintainability of the revision stands set aside. [Para 5] [871-B-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 452 of 2002.

From the Judgment and Order dated 3.7.2001 of the High Court of Kerala at Ernakulam in CrI. R.P. No. 186 of 1999 (A).

L.N. Rao, Roy Abraham, Seema Jain and Himinder Lal for the Appellant.

A. Mariarputham, K.R. Sasiprabhu, P.V. Dinesh Sindhu T.P., Arun Basil and G. Prakash for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a learned Single Judge of the Kerala High Court allowing the Revision Petition filed by the State. Challenge before the High Court was to the order dated

A 20.11.1998 in Criminal M.C. No.2081 of 1997 passed by
learned First Additional Sessions Judge, Trivandrum. The issue
related to the scope and ambit of Section 341 of the Code of
Criminal Procedure, 1973 (in short the 'Code'). The High Court
examined the question as to whether a person who had not
B filed an application as required under Section 340 of Code
could file an appeal under Section 341 of the Code. The High
Court held that a person who had not filed complaint and the
proceedings were initiated suo motu by the Court could not file
an appeal. But held that a revision petition was maintainable.
C It is latter part of the revision petition order relating to
maintainability before the High Court which is under challenge.

2. Learned counsel for the appellant submitted that the
scope and ambit of sub-section (2) of Section 341 has been
completely lost sight of by the High Court.

D 3. Learned counsel for the respondent on the other hand
submitted that the appellant is taking varying stands at different
points of time and in the order impugned before the High Court
not only the parameters of Section 340 and 341 were under
E consideration but also the other relevant aspects.

4. Section 341 reads as follows:

F "341-Appeal-(1)- Any person on whose application any
Court other than a High Court has refused to make a
complaint under sub-section (1) or sub-section (2) of
section 340, or against whom such a complaint has been
made by such Court, may appeal to the Court to which
such former Court is subordinate within the meaning of
sub-section (4) of section 95, and the superior Court may
G thereupon, after notice to the parties concerned, direct the
withdrawal of the complaint or, as the case may be, making
of the complaint which such former Court might have made
under section 340, and if it makes such complaint, the
provisions of that section shall apply accordingly.

H

(2) An order under this section and subject to any such order, an order under Section 340, shall be final, and shall not be subject to revision." A

5. A bare reading of the provisions makes it clear that an appeal under Section 341 can be filed by any person on whose application the Court other than the High Court refused to make a complaint under sub-section (1) or sub-section (2) of Section 340. The other person who can file an appeal is one against whom such a complaint has been made by such Court. Undisputedly, the present case was one where the initiation was suo motu by the High Court. The effect of decision of the Court which took suo motu action not to proceed further appears to have kept in mind by the legislature while enacting Section 341(1). Sub-section (2) of Section 341 is relevant for the purpose of this case. It states that an order under Section 341 and subject to any such order, an order under Section 340 shall be final and shall not be subject to revision. In other words there is legal embargo created on filing a revision in respect of an order under Section 340 which cannot be the subject matter of challenge. Undisputedly, what was challenged before the High Court was an order under Section 340 by the State of Kerala. The High Court was justified in holding that no appeal can be filed by the State under Section 341 of the Act. But its conclusions about maintainability of the revision are indefensible in view of the clear language of sub-section (2) of Section 341. It appears that the High Court has made certain observations against the officers which do not in our view warrant interference. Therefore, the impugned order of the High Court regarding the maintainability of the revision stands set aside. B
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6. The appeal is allowed to the aforesaid extent. G

D.G.

Appeal partly allowed.