

[2009] 9 S.C.R. 20

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K.T. JOSEPH

v.

STATE OF KERALA & ANR.  
(Criminal Appeal No.984 of 2009)

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MAY 8, 2009

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

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*CODE OF CRIMINAL PROCEDURE, 1973:*

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*Section 202 – Amending Act, 25/2005 – After the amendment, it is mandatory to conduct an enquiry – By deciding to examine the complainant and the witnesses, the Magistrate had already taken cognizance – Transfer of the case ordered by Single Judge of High Court – Held: The observations and directions are in order.*

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 984 of 2009.

From the Judgment & Order dated 31.07.2008 of the High Court of Kerala at Ernakulam in Criminal Revision Petition No. 1858 of 2008.

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U.U. Lalit, T. Ajay, P. Harish, Pyoli and Sumita Hazarika for the Appellants.

R. Sathish and E.M.S. Anam for the Respondents.

The Judgment of the Court was delivered by

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**DR. ARIJIT PASAYAT, J.** 1. Leave granted.

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2. A small issue relating to the transfer of the proceedings in CC 1290 of 2008 on the file of learned Additional Chief Judicial Magistrate, Ernakulam forms the foundation for these proceedings. By an order in Criminal Revision Petition no.1858

of 2008 a learned Single Judge directed transfer of the case to the Chief Judicial Magistrate, Ernakulam. Certain observations were made against the Judicial Officer and his conduct. Learned Single Judge has observed that after the amendment to Section 202 of the Code of Criminal Procedure, 1973 (in short the 'Code') with effect from 23.6.2006 by Central Act 25/2005 it is mandatory on the part of the learned Magistrate to conduct an enquiry under Section 202 of Code. Learned Single Judge noted that the Magistrate had emphasized that he was considering the complaint at the pre cognizance stage which according to him was not correct. By deciding to examine the complainant and the witnesses under Section 202 of Code, the Magistrate had already taken cognizance of the offence and he was not considering the sworn statements of the witnesses at the pre cognizance stage. Learned Single Judge felt that enquiry was mandatory after 23.6.2006.

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3. The legal position is unexceptionable.

4. In the background facts we do not think that any exception can be taken to the transfer as directed by learned Single Judge. The observations regarding the conduct are unnecessary and stand deleted. Learned Single Judge has directed that the Chief Judicial Magistrate shall have discretion to record further sworn statements if necessary in case he decides to take cognizance of the offence. The aforesaid observations and directions are also in order.

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5. The appeal is accordingly disposed of.

G.N.

Appeal disposed of.