

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 20<sup>TH</sup> DAY OF MARCH 2023 / 29TH PHALGUNA, 1944

CRL.MC NO. 2192 OF 2023

AGAINST CMP 187/2023 IN SC 496/2020 OF ADDITIONAL SESSIONS

COURT (MARAD CASES, KOZHIKODE

CRIME NO.189/2011 OF KODANCHERY POLICE STATION

PETITIONER/ACCUSED NO.1:

JOLLYAMMA JOSEPH @ JOLLY  
AGED 47 YEARS, W/O SHAJU ZACHARIAS,  
PONNAMATTAM-HOUSE,  
KODATHAI BAZAR, THAMARASERRY-TALUK,  
KOZHIKODE-DISTRICT, PIN - 673573

BY ADVS.

SRI.BIJU ANTONY ALOOR

SRI.K.P.PRASANTH

SRI.VISHNU DILEEP

SMT.T.S.KRISHNENDU

SMT.ARCHANA SURESH

SRI.HIJAS T.T.

RESPONDENTS/COMPLAINANT:

1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA,  
ERNAKULAM, PIN - 682031

2 DEPUTY SUPERINTENDENT OF POLICE  
DCB KKD (RL) & KODANCHERY P.S.,  
KOZHIKODE-DISTRICT, PIN - 673580

BY ADVS.

SRI.GRASHIOUS KURIAKOSE, ADDL.DIRECTOR GENERAL OF  
PROSECUTION

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 17.03.2023, THE COURT ON 20.03.2023 PASSED THE  
FOLLOWING:

**"C.R."**

**BECHU KURIAN THOMAS, J.**

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**CrI.M.C No.2192 of 2023**  
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Dated this the 20<sup>th</sup> day of March, 2023

**ORDER**

Petitioner is facing prosecution as the first accused in a case of mariticide. On 07.03.2023, the trial commenced. The learned Sessions Judge ordered the proceedings to be held in-camera. Learned counsel for the first accused thereafter filed a petition to recall the order directing in-camera trial. The said application was dismissed by the impugned order. Hence this petition under section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C') by the first accused.

2. S.C. No.496 of 2020 on the files of the Additional Sessions Court (Marad Cases), Kozhikode relates to the murder of the husband of Smt. Jollyamma - the first accused. The case attained widespread media attention since the first accused is alleged to have murdered five other persons over a period of time by poisoning. On the date when the case was posted for commencement of trial, the learned Sessions Judge ordered proceedings to be held in-camera. Three Advocates for each of the accused were also permitted to be inside the court, apart from the prosecution.

3. Aggrieved by the said order, an application was filed by the

counsel for the first accused seeking to recall the order directing the holding of the proceedings in-camera. However, by the impugned order, the learned Sessions Judge dismissed the application.

4. Sri. Biju Antony Aloor, learned counsel for the petitioner submitted that as per section 327 of Cr. P.C, all criminal cases are to be held in open court and the only exception is with respect to sexual offences, which are specified in the statute itself. According to the counsel, without any reason, the learned Sessions Judge has ordered in-camera proceedings as a result of which all his junior Advocates, law interns and even the media are prevented from entering the court. The learned counsel further contended that the concept of in-camera proceedings is alien to the court except in exceptional circumstances specified therein and the power to order an in-camera proceeding cannot be based upon the whims and fancies of the officer.

5. Sri. Grashious Kuriakose, learned Additional Director General of Prosecution assisted by Adv. Suresh C.K., on the other hand pointed out that the first accused herself had filed a petition to the learned Sessions Judge stating that whenever she is attending the court, the media are following her, intruding into her privacy, even when she goes to the bathroom. In the petition, the first accused further stated that for the last one week, both the print and the visual media have been publishing relevant and irrelevant materials, which are disturbing the future of her

children and her family and requested the court to prevent the intrusion of media. She even expressed her surprise at the media publishing every detail of a case, which has not even resulted in a judgment. Petitioner had also alleged that for the sheer purpose of availing a higher viewership rating, the media are publishing news, causing great mental agony to her and to her family. She requested the court to take an appropriate decision based on her human rights and the circumstances pointed out therein. It was also submitted that the decision to make it an in-camera proceeding was taken by the learned Judge only after such a representation was filed by the first accused and the same needs no interference.

6. I have considered the rival contentions.

7. Cr.P.C provides for open court proceedings in all cases, except for the sexual crimes specified in section 327(2) Cr.P.C. Open court is the norm and closed court or proceedings in-camera an exception. For a better comprehension section 327 is extracted as below:

***“327 Court to be open.-(1) The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them:***

*Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.*

*(2) Notwithstanding anything contained in sub- section (1), the inquiry into and trial of rape or an offence under section 376, section 376-A, section 376-AB, section 376-B, section 376-C, section 376-D, section 376-DA, section 376-DB or section 376-E of the Indian Penal Code (45 of 1860) shall be conducted in camera:*

*Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the Court:*

*Provided further that in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate.*

*(3) Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the Court:*

*Provided that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties.”*

8. Section 327(1) states that the place where a criminal court is held shall be deemed to be an open Court, to which the public generally may have access. It is true that as a general rule, the trials are to be held in open court. The said rule, however, cannot be treated as admitting of no exceptions since the provision itself carves out an exception and confers power upon the judicial officer to restrain access to the public in general or any particular person and that too, at any stage of the enquiry or trial. One of the exceptions is if the case relates to sexual offences. A further exception is carved out as is evident from the proviso to section 327(1) where the Presiding Judge is satisfied that a proceeding must be held without access to the public in general or to any particular person. The said specific provision overrides other concepts that govern the conduct of a case in open court. When the Presiding Officer is satisfied that open court will not be conducive to either the accused or the victim or even for any other reason, he can order such in-camera proceedings. The principle

of the open court shall in such circumstances yield to the satisfaction of the Judge in the interests of the administration of justice. Unless the applicant is able to show that prejudice has been caused on account of the order directing in-camera proceedings to be held, this Court ought not, in exercise of the inherent jurisdiction, interfere with the satisfaction exercised by the trial Judge.

9. In the instant case, the first accused herself had specifically complained about the intrusions into her privacy and the publication of details which were disturbing for the future of her family including her children. She even pointed out that the media intrusions and reports are causing mental agony to her bordering on infringement of her human rights and requested the Court to initiate appropriate action. When such a request came up before the court, the learned Judge deemed it fit to direct the trial to be held as in-camera. Viewed in that perspective, this Court is of the opinion that the Presiding Judge was wholly justified in directing the trial to be held as in-camera proceedings.

10. The learned counsel for the petitioner projects a case of prejudice being caused to the junior lawyers and interns attached to the counsel's office and other law students who may be interested to learn the nuances of the profession of advocacy and its art. The criminal trial is primarily intended to ascertain the truth of the allegations. The victim and the accused are the main stakeholders. The Prosecutor and the defence

counsel apart from the Investigating Officer and the Presiding Judge are the remaining and perhaps secondary stakeholders, whose roles are specified and are also crucial to the conduct of a trial. The other junior lawyers of the Bar and the law interns cannot be treated as persons interested or as essential participants in the trial of an individual case, even if their presence would be conducive to the future of the profession. Moreover, when the Judge is satisfied that the absence of in-camera proceedings will lead to prejudice to the accused or the victim, the interest of the junior members of the profession or that of the law interns will have to yield to the former. Prejudice to the junior lawyers of the profession and the law interns is in fact an abstruse reason to challenge the order directing the holding of trial in-camera. In such a perspective also, the claim of the petitioner has to fail.

11. In this context, it is apposite to mention that the Presiding Officer had even permitted three junior Advocates to remain inside the court for each of the accused. With four separate Advocates appearing for the four accused, apart from the Prosecutor, the number of Advocates permitted will be 15. Therefore the court has certainly taken into consideration the interest of the junior lawyers as well as the needs of the future of the profession of Advocates.

12. In view of the above discussion, I find no merit at all in the challenge against the order refusing to recall the order directing in-camera

proceedings.

13. Before concluding it must be observed as a tailpiece that the obligation of an Advocate is certainly to the client which he represents and when the client requires professional expertise for the conduct of a trial, an Advocate must adhere to such obligations and participate in the trial wholeheartedly.

This criminal miscellaneous case is dismissed.

**Sd/-**

**BECHU KURIAN THOMAS  
JUDGE**

vps



APPENDIX OF CRL.MC 2192/2023

PETITIONER'S/S' ANNEXURES:

ANNEXURE 1 TRUE COPY OF THE ORDER IN CRL.M.P NO.  
187/2023 DATED 08/03/2023

ANNEXURE 2 TRUE COPY OF THE PROCEEDINGS DATED  
07/03/2023 OF THE HON'BLE SPECIAL ADDL.  
SESSIONS COURT (MARAD CASES) AT  
KOZHIKODE IN S.C NO. 496/2020