

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 23RD DAY OF MARCH 2023 / 2ND CHAITHRA, 1945

CRL.MC NO. 5493 OF 2021

AGAINST SC 214/2001 OF I ADDITIONAL SESSIONS COURT, KOLLAM

CC 8/2006 OF CHIEF JUDICIAL MAGISTRATE , KOLLAM

PETITIONER/ACCUSED:

RAJAN

AGED 52 YEARS, S/O. CHELLAPPAN CHETTIAR,
AZHOORTHAVILAKATH VEEDU,
AZHOOR DESOM, CHIRAYINKEEZHY PANCHAYATH,
SARKARA VILLAGE.

BY ADVS.

SRI.M.T.SURESHKUMAR

SRI.R.RENJITH

RESPONDENT/COMPLAINANT/STATE:

STATE OF KERALA

REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM - 682 031.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON,
08.02.2023 THE COURT ON 23.03.2023 PASSED THE FOLLOWING:

"C.R."

BECHU KURIAN THOMAS, J.

Crl.M.C No.5493 of 2021

Dated this the 23rd day of March, 2023

ORDER

The deposition given by the petitioner in a case tried by the Sessions Court has landed him as an accused for the offence of perjury. Pursuant to the order of the Sessions Court finding grounds to proceed against the petitioner under section 340 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') a complaint has been forwarded to the Magistrate and registered as C.C. No.8 of 2006 on the files of the Chief Judicial Magistrate's Court, Kollam. Petitioner has invoked the jurisdiction of this Court under section 482 Cr.P.C to quash the said proceedings.

2. In a notorious case referred to as 'Kalluvaathukkal liquor tragedy' petitioner was examined as PW71. The case was numbered as S.C. No.214 of 2001 before the 1st Additional Sessions Court, Kollam. When petitioner was examined in court, he deposed contrary to the statement given by him under section 164 Cr.P.C. and therefore he was declared hostile. While deposing in court, he stated that his earlier statement was under threat and coercion from the police.

Despite petitioner turning hostile to the persecution case, the main accused were convicted and their conviction was upheld all along including the Supreme Court though the sentences were modified in respect of some of the accused. The decision is reported in **Chandran alias Manichan alias Maniyan and Others v. State of Kerala** [(2011) 5 SCC 161].

3. In the meantime, the learned Sessions Judge had observed in paragraph 365 of the judgment that, petitioner herein had given false evidence and initiated action under section 344 Cr.P.C, by registering a case as M.C. No.8 of 2002 in S.C. No.214 of 2001 on the files of the 1st Additional Sessions Court, Kollam. Later, by an order dated 17.11.2005, after a preliminary enquiry the court was of the opinion that there were prima facie grounds for proceeding against the petitioner since he had turned hostile to the prosecution case denying bluntly the statement given by him under section 164 Cr.P.C. On the above basis, the learned Sessions Judge forwarded the findings to the Judicial First Class Magistrate's Court, Kollam under section 344(3) Cr.P.C along with a complaint and the relevant passage of the judgment in the sessions case. The Chief Judicial Magistrate took cognizance of the offence as C.C. No.8 of 2006 and issued process to the petitioner for his appearance.

4. In the meantime since the Supreme Court had stayed the

entire proceedings in the Special Leave Petition preferred by the accused, the complaint against the petitioner was not proceeded further. After the Supreme Court disposed of the SLP, the learned Magistrate proceeded with C.C. No.8 of 2006 and it was at this juncture that this petition has been preferred.

5. Sri.M.T.Suresh Kumar, learned counsel for the petitioner contended that the prosecution was successful in obtaining conviction for most of the accused before the Sessions Court and therefore the proceedings under section 340 Cr.P.C ought not to have been resorted to. It was also contended that given the long lapse of time the court ought to have dropped all proceedings against the petitioner and further that the proceedings are vitiated by illegality and impropriety.

6. Sri.Vipin Narayan, learned Public Prosecutor on the other hand contended that the proceedings have been initiated on valid and legal grounds and therefore there is no reason to interfere and the law must take its course.

7. Petitioner is being proceeded against for deposing before the Sessions Court in S.C. No.214 of 2001 as PW71 contrary to the statement given by him to the Magistrate earlier, under section 164 Cr.P.C The deposition of the petitioner as PW71 was on 17.08.2001. Despite petitioner resiling from his earlier statement under section 164 Cr.P.C, the learned Sessions Judge had found the main accused

guilty and even sentenced him and other accused to life imprisonment.

8. When a person resiles from his earlier statement given on oath, in a subsequent deposition, also given on oath, it is not easy to arrive at a conclusion as to which of the statements were false. If the earlier statement made under section 164 Cr.P.C was false, then the witness cannot be expected to stick to the said statement solely for the purpose of avoiding a prosecution for perjury.

9. It is not any and every statement made by a witness that the court should initiate action for perjury. If such a course of action is adopted, there would be very little time for courts for any serious work other than directing prosecution for perjury. The gravity of the false statement, the circumstances under which such statement was made and the repercussion of such a statement, are matters which the court ought to bear in mind before initiating a prosecution for the offence of perjury. Resiling from an earlier sworn statement need not in every circumstance result in initiating action for giving false evidence. Individual discretion must be exercised based on the factors mentioned above.

10. In the decision in **Thomman v. IInd Additional Sessions Judge** (1993 (2) KLT 774), a learned single Judge of this Court had observed as follows:

"3. No doubt, what the appellant said before the magistrate and what he deposed before the Sessions Court are diametrically opposite to each other. At least, one of them must, therefore, be necessarily false. According to the appellant, what he told the magistrate was false. It is not the law that every false testimony should be put through the procedure prescribed in S.340 of the Code. To attract the procedure, the person concerned should have intentionally given false evidence for the purpose of being used in a judicial procedure and the court should have been of opinion that it was expedient in the interest of justice to take action against him. Merely because a person gave false evidence, it is inadvisable or inexpedient to take action against him. "It is not any and every statement made by a witness that the court would wish to examine. If the court is to notice every falsehood that is sworn to by parties in courts there would be very little time for courts for any serious work other than directing prosecution for perjury. Again the edge of such weapon would become blunted by indiscriminate use. The gravity of the false statement, the circumstances under which such statement is made, the object of making such statement and its tendency to impede and impair the normal flow of the course of justice are matters for consideration when the court decides on the propriety of instituting a complaint for perjury (vide Muraleekrishna Das v. I.G. of Police, 1978 KLT 292)."

11. Similarly a division bench of this court in **Kuriakose v. State of Kerala** (1995 (1) KLT 76) had observed that courts should be prima facie satisfied that the proceedings under section 340 Cr.P.C should be initiated for the interests of justice and that there must be prima facie evidence supporting a conclusion that false evidence was tendered.

12. On a perusal of the above referred judgments, it is evident that for every false statement made before a court, prosecution under section 340 of the Cr.P.C ought not to be initiated. Similarly it is not necessary in every case that the subsequent statement before court given as a deposition should necessarily be the false one. Therefore,

a summary enquiry is to be conducted by the prosecuting court itself to arrive at a conclusion that the statement given before court was false.

13. In the case on hand, the alleged false evidence given by the petitioner did not have any impact on the prosecution case. The main accused were all convicted by the trial court itself. There was no material prejudice caused to the prosecution case due to the petitioner resiling from his earlier statement. Further, almost 21 years have now elapsed since the date of giving evidence as PW71 and 17 years since complaint was directed to be filed. At this distance of time, in the peculiar circumstances of the case, prosecuting the petitioner for giving false evidence would only be a waste of judicial time especially since despite petitioner's evidence, the prosecuting agency had brought forth sufficient evidence and material to prove the guilt of the accused.

14. In view of the above discussion, this Court is of the view that the prosecution against the petitioner in C.C. No.8 of 2006 on the files of the Chief Judicial Magistrate's Court, Kollam initiated pursuant to Annexure A2 and Annexure A3 is an abuse of the process of court. Therefore all proceedings pursuant to Annexure A2 and Annexure A3 on the files of the 1st Additional Sessions Court, Kollam and pending as C.C. No.8 of 2006 on the files of the Chief Judicial Magistrate's

Crl.M.C. 5493/21

-:8:-

Court, Kollam are quashed.

This criminal miscellaneous case is allowed as above.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps

APPENDIX OF CRL.MC 5493/2021

PETITIONER'S/S' ANNEXURES

- ANNEXURE A1 TRUE COPY OF THE STATEMENT OF THE
PETITIONER BEFORE THE SESSIONS COURT,
KOLLAM IN SC NO.214/2001 DATED
17/8/2021.
- ANNEXURE A2 TRUE COPY OF THE ORDER DATED 17/11/2005
PASSED BY THE 1ST ADDITIONAL DISTRICT
JUDGE, KOLLAM.
- ANNEXURE A3 TRUE COPY OF THE COMPLAINT BY THE 1ST
ADDITIONAL SESSIONS JUDGE, KOLLAM DATED
17/11/2005.