

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

WEDNESDAY, THE 24TH DAY OF MAY 2023 / 3RD JYAISHTA, 1945

CRL.MC NO. 6346 OF 2022

AGAINST THE ORDER/JUDGMENT IN SC 595/2021 OF ADDITIONAL
DISTRICT COURT & I ADDITIONAL MOTOR ACCIDENT CLAIMS
TRIBUNAL , THALASSERY

CRIME NO.114 OF 2021 OF CHERUPUZHA POLICE STATION

PETITIONER/S:

JITHIN.P
AGED 28 YEARS
S/O. UTHAMAN, NADUKKANDY HOUSE, P.O.
MANGATTIDAM, KUTHUPARAMBA, KANNUR DISTRICT, PIN
- 670643
BY ADV P.P.RAMACHANDRAN

RESPONDENT/S:

- 1 STATE OF KERALA (SHO CHERUPUZHA POLICE STATION,
KANNUR) REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031
- 2 XXXXXXXXXXXX
XXXXXXXXXXXX XXXXXXXXXXXX
- 3 YYYYYY
XXX
R1 BY SRI N R SANGEETHA RAJ ,PP
R1 AND R3 BY ADV M.SHAJNA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 24.05.2023, ALONG WITH CrI.MC.5909/2022, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

WEDNESDAY, THE 24TH DAY OF MAY 2023 / 3RD JYAISHTA, 1945

CRL.MC NO. 5909 OF 2022

**AGAINST THE ORDER/JUDGMENTSC 547/2021 OF DISTRICT COURT &
SESSIONS COURT, THALASSERY**

CRIME NO.111 OF 2021 OF CHERUPUZHA POLICE STATION

PETITIONER/S:

JITHIN.P.
AGED 28 YEARS
S/O. UTHAMAN, NADUKKANDY HOUSE, P.O.
MANGATTIDAM, KUTHUPARAMBA, KANNUR DISTRICT,
PIN - 670643
BY ADVS.
P.P.RAMACHANDRAN
JITHIN S SUNDARAN

RESPONDENT/S:

- 1 STATE OF KERALA (SHO CHERUPUZHA POLICE
STATION, KANNUR)
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031
- *2 PREMACHANDRAN E.K,
DEPUTY SUPERINTENDENT OF POLICE, PAYYANNUR ,
PIN-670307 IS DELETED FROM THE ARRAY OF PARTY
*(RESPONDENT NO. 2 IN CRL.MC.5909/2022 IS
DELETED AS PER ORDER DATED 29/8/2022 IN CRL.MA.
2/2022 IN CRL.MC. 5909/2022.

ADDL.R2 XXXX

RESPONDENT 2 (VICTIM) IMPEADED AS PER ORDER
DATED 23.09.2022 IN CRL MA 3/2022.

ADDL.R3 PETITIONER/FATHER OF VICTIM

ADDITIONAL 3 RESPONDENT IMPEADED AS PER DATED
ORDER 10/11/2022 IN CRL.MA.4/2022 IN
CRL.MC.5909/2022.

CrL.MC Nos.6346 & 5909 OF 2022

..3..

R1 BY PUBLIC PROSECUTOR SRI N R SANGEETHARAJ
ADDL R2 AND R3 BY ADVS.P.P.RAMACHANDRAN
M.SHAJNA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 24.05.2023, ALONG WITH CrL.MC.6346/2022, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:

“C.R.”

Crl.MC Nos.6346 & 5909 of 2022

COMMON ORDER

The petitioner is the accused in S.C.No.547 of 2021 on the file of the Sessions Court, Thalassery and S.C.No.595 of 2021 on the file of the Additional District and Sessions Court-I, Thalassery.

2. In S.C.No.595 of 2021, the petitioner faces charges under Sections 450 and 376(2)(n) of IPC, Section 4 r/w Section 3(a), Section 6 r/w Section 5(l), Section 12 r/w Sections 11(iv), 11(v) and 11(vi) of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), Section 67-B of the Information Technology Act, 2000 and Sections 3(1)(w)(i) & 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,1989 (SC/ST (POA) Act).

3. In S.C. No. 547 of 2021, he faces charges under Section 305 of IPC and Section 3(2)(v) of the SC/ST (POA) Act.

4. In Crl.M.C.No.6346 of 2022, the petitioner seeks to quash the Final Report in S.C.No.595 of 2021. The petitioner seeks to quash the Final Report in S.C.No.547 of 2021 in Crl.M.C.No.5909 of 2022. The petitioner alternatively prayed for directing the Investigating Officer concerned to take back the Final Report filed in S.C.No.547 of 2021 and to submit before the Special Court for POCSO Act cases for trying both matters together.

5. On 09.06.2021 at 10.50hrs, a girl aged 17 years was found hanging on the ceiling fan of the bedroom of her family house. The SHO, Cherupuzha Police Station, registered crime No.111/2021 under Section 174 Cr.P.C. On 09.06.2021 itself, based on the information that the petitioner abetted the minor girl to commit suicide, the Investigating Officer altered the penal provisions in Crime No.111/2021 as Section 305 IPC and Section 3(2) (v) of SC/ST(POA) Act. The Doctor who conducted the postmortem on the body of the girl at Medical College,

Pariyaram, reported that the girl was subjected to aggravated penetrative sexual assault when she was below 17 years old. On 16.06.2021, based on the information that the girl was subjected to aggravated penetrative sexual assault, Cherupuzha Police registered Crime No.114 of 2021 under Section 376(2) of IPC and Sec.4 r/w Section 3(a) of the POCSO Act. The petitioner herein has been arrayed as accused in both crimes.

6. In Crime No.111/2021, the Police completed the investigation and submitted the final report before the Sessions Court, Thalassery. In Crime No.114/2021, final report was submitted before the Additional District and Sessions Court-I, Thalassery..

7. The learned counsel for the petitioner submitted that the acts alleged constitute the same transaction; therefore, the petitioner should have been charged and tried at one trial for those offences. It is submitted that the trial of these two cases by two different Courts would cause prejudice to the accused.

The learned counsel for the petitioner further submitted that filing two separate charge sheets permitting two trials is against the provisions of Section 220 Cr.P.C. The learned counsel for the petitioner relied on ***State of Karnataka v. M.Balakrishna*** [1980 CRL. L.J. 1145] in support of his contentions.

8. Per contra, the learned Public Prosecutor submitted that, in the given facts, the alleged acts do not form the same transaction, whereas they are distinct and different. The learned counsel for respondent Nos. 2 and 3 also supported the contentions of the learned Public Prosecutor.

9. For the convenience of analysis, Section 220 Cr.P.C. is extracted below:-

220. Trial for more than one offence (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of section

212 or in sub- section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

- (3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.
- (4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.
- (5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860).

10. Section 220 Cr.P.C. relates to the joinder of charges of offences committed by the same person. It applies to a case in which different offences or acts are parts of a single transaction. If the offences are committed in the course of the same transaction, they may be tried together. The Section is an enabling

provision. It permits the Court to try more than one offence in one trial. The Court may or may not try all the offences together in one trial. If the Court tries the offences separately, it does not commit any illegality. The accused in a case has no vested right to seek joinder of charges and trial of more offences in one trial.

11. The expression “same transaction” is vital for deciding the question of whether the series of acts are so connected together to be tried at one trial.

12. There cannot be a universal formula for the purpose of determining whether two or more acts constitute the same transaction. The commonality of purpose or design and continuity of action manifest that the same or different offences were committed in the course of the same transaction. The proximity of time, unity of place, unity or community of purpose or design and continuity of action make the series of acts alleged against the person to constitute the same transaction.

13. In ***Mohan Baitha v. State of Bihar*** [(2001) 4

SCC 350], the Supreme Court has considered the scope of Section 220 Cr.P.C. by constructing the meaning of the expression “same transaction”. In ***Mohan Baitha***, the Supreme Court held thus:-

“The expression “same transaction” from its very nature is incapable of an exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense and the ordinary use of language must decide whether on the facts of a particular case, it can be held to be in one transaction. It is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. But the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form parts of the same transaction or not. Therefore a series of acts whether are so connected together as to form the same transaction is purely a question of fact to be decided on the aforesaid criteria.”

14. In ***Anju Chaudhary v. State of U.P.*** [(2013) 6 SCC 384], while considering the test to be applied for determining the question whether two ore more acts

constitute the same transaction, the Supreme Court held thus:-

“43. It is true that law recognizes common trial or a common FIR being registered for one series of acts so connected together as to form the same transaction as contemplated under [Section 220](#) of the Code. There cannot be any straight jacket formula, but this question has to be answered on the facts of each case. This Court in the case of [Mohan Baitha v. State of Bihar](#) [(2001) 4 SCC 350], held that the expression ‘same transaction’ from its very nature is incapable of exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense in the ordinary use of language must decide whether or not in the very facts of a case, it can be held to be one transaction.

44. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. Where two incidents are of different times with involvement of different persons, there is no commonality and the purpose thereof different and they emerge from different circumstances, it will not be possible for the Court to take a view that they form part of the same

transaction and therefore, there could be a common FIR or subsequent FIR could not be permitted to be registered or there could be common trial.

45. Similarly, for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences “committed in the course of the same transaction”.”

[emphasis supplied]

15. In ***P. v. State of Uttarakhand and another*** [2022 KHC 6634], the Supreme Court has considered a similar fact situation. In ***P. v. State of Uttarakhand***, the appellant therein allegedly committed rape on a girl in February 2016. Later, he made a demand for money and refused to marry her when the demand was not met. Later on, he hurled abuses at her and threatened to kill her. A complaint was filed by the victim, which was forwarded for investigation under Section 156(3) Cr.P.C. The Police submitted a Final Report clubbing both the

acts alleging offences under Sections 376, 504 and 506 of IPC. When the question, whether the offences were distinct or not came up, the Supreme Court held that the offences were distinct in nature and those being different offences could be separately charged and tried. Following the decisions in ***Mohan Baitha v. State of Bihar*** (Supra) and ***Anju Chaudhary v. State of U.P.*** (Supra), the Supreme Court held that for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action.

16. State of Karnataka v. Balakrishna (Supra), the decision relied on by the learned counsel for the petitioner, also fortifies the principles discussed above.

17. I shall examine the facts in the present case on the touchstone of the principles discussed above.

18. In Crime No.114 of 2021, the prosecution alleged the following:-

- a. On 18.12.2020, the petitioner committed criminal trespass by entering into the residence of the victim and remained there till 19.12.2020 and committed rape on her.
- b. The petitioner on 13.02.2021, trespassed into the residence of the victim and remained there till 14.02.2021 and committed rape on her.
- c. The petitioner committed aggravated penetrative sexual assault on the victim on the above-said dates.
- d. The petitioner committed the above acts knowing that the girl is a member of a Scheduled Caste/Scheduled Tribe Community.

19. In Crime No.111 of 2021, the prosecution alleged the following:-

- a. Between 08.06.2021 and 09.06.2021, the petitioner contacted the victim over the mobile phone and alleged that she had illicit

relationship with other persons and also threatened her that he would disseminate her illicit relationship with him to others.

- b. Petitioner threatened her that he would send her nude photos to her mother.
- c. The mental stress suffered by her due to the above acts of the petitioner led the victim to commit suicide on 09.06.2021.

20. The material placed before the Court would show that the alleged acts of rape, sexual assault and sexual harassment in Crime No.114/2021 were committed between 18.12.2020 and 19.12.2020, and between 13.02.2021 and 14.02.2021.

21. The acts alleged in crime No.111 of 2021 were committed between 08.06.2021 and 09.06.2021.

22. The acts in question were not proximate in time. They were not of continuity either. It is difficult to find continuity of the actions and the community of purpose or design in the acts leading to two different sets

of transactions, one of sexual exploitation of a minor girl by entering into her residence leading to the offences of house-trespass, rape, aggravated penetrative sexual assault (under Sections 450 and 376(2)(n) of IPC, Section 4 r/w Section 3(a), Section 6 r/w Section 5(l), Section 12 r/w Section 11(iv), 11(v) and 11(vi) of the POCSO Act), and another of abetment to commit suicide (under Section 305 of IPC).

The resultant conclusion is that the core elements of the proximity of time, unity or proximity of place, unity and continuity of action, and commonality of purpose or design, which are of relevant consideration, are not in favour of a joint trial based on a joint charge. This Court is unable to accept the contention of the petitioner that the acts alleged formed the same transaction. Therefore, the prayer for a joint trial of the cases cannot be sustained. The Crl.M.C.s stand dismissed.

Sd/-
K. BABU, JUDGE

APPENDIX OF CRL.MC 5909/2022

PETITIONER ANNEXURES

Annexure A	A TRUE COPY OF THE FIR IN CRIME NO.111/2021
ANNEXURE B	A TRUE COPY OF THE FIR IN CRIME NO.114/2021
Annexure C	A CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.111/2021
ANNEXURE D	A TRUE COPY OF THE COURT CHARGE
ANNEXURE E	A TRUE COPY OF THE WITNESS LIST IN SC 547/2021
ANNEXURE F	TRUE COPY OF THE WITNESS LIST IN SC NO.595/2021

APPENDIX OF CRL.MC 6346/2022

PETITIONER ANNEXURES

Annexure A1	A TRUE COPY OF THE FIR IN CRIME NO.111/2021
ANNEXURE A2	A TRUE COPY OF THE FIR IN CRIME NO.114/2021
Annexure A3	A CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.111/2021
ANNEXURE A4	A CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.114/2021
ANNEXURE A5	A TRUE COPY OF THE CHARGE IN SC NO.595/2021 OF ADDL DISTRICT AND SESSIONS COURT - I, THALASSERY