

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 5<sup>TH</sup> DAY OF DECEMBER 2023/29TH KARTHIKA, 1945

O.P(CRL.) .NO.809 OF 2023

PETITIONER(S) :

SUO MOTU  
HIGH COURT OF KERALA, ERNAKULAM,  
PIN - 682031.

BY SRI.NANDAGOPAL S. KURUP, AMICUS CURIAE

RESPONDENT(S) :

1 STATE OF KERALA  
REPRESENTED BY CHIEF SECRETARY,  
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM, PIN -695001.

2 THE DIRECTOR GENERAL OF POLICE  
STATE POLICE HEAD QUARTERS, VELLAYAMBALAM,  
THIRUVANANTHAPURAM, PIN - 695010.

BY SRI.S.U.NAZAR, SPL. PUBLIC PROSECUTOR  
BY SRI.E.C.BINEESH, PUBLIC PROSECUTOR

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON  
20.11.2023, THE COURT ON 05.12.2023 DELIVERED THE  
FOLLOWING:

**“C.R.”****J U D G M E N T****Dr. A.K. Jayasankaran Nambiar, J.**

This O.P.(CrI.) was instituted *suo motu* by the High Court pursuant to the resolution dated 22.08.2023 of the Administrative Committee of this Court. The file has been placed before us pursuant to a direction of the Hon'ble the Chief Justice.

2. The trigger for registering the *suo motu* case appears to have been the burgeoning figures showing the pendency of petty cases before the various Magistrate Courts in the State. Statistics show that, as of now, 1.59 lakhs of petty cases are pending before various Magistrate Courts across the State. An enquiry into the reasons for these alarming figures reveal that a significant number of those cases represent instances where the prosecution has been unable to secure the presence of the accused either because the address furnished is fake or incomplete or for such other reasons. It is stated that while in the past, the Magistrates used to rely on the provisions of Section 258 of the Code of Criminal Procedure [hereinafter referred to as the “Cr.P.C.”] to stop the proceedings in

cases where the presence of the accused could not be secured despite the earnest efforts of the prosecution, they have since desisted from the said course of action owing to the orders of this Court dated 10.09.2018 in CrI.R.C.No.5 of 2018 and connected cases and 20.05.2019 in CrI.R.C.No.1869 of 2018 and connected cases - [2019 (3) KLT 98], both of which orders were passed in *Suo Motu* proceedings initiated by this Court pursuant to the resolution dated 18.09.2017 of an earlier Administrative Committee of this Court.

3. Considering the importance of the issue involved, we appointed Adv. Nandagopal S. Kurup as *amicus curiae* to assist the court. We heard the learned *amicus curiae* and the learned Senior Government Pleader Sri. S.U.Nazar.

4. Sri. Nandagopal S. Kurup submitted that Section 258 of Cr.P.C which gives discretionary power to the Magistrate to stop the proceedings of a summons case instituted on police report could be invoked when there exists serious defect in the prosecution cases, which go to the root of the matter, rendering further proceedings impossible or futile. According to the learned *amicus curiae*, the absence of correct address of the accused in the prosecution records and the impossibility to locate the whereabouts of the accused is a serious defect making it impossible for the court to proceed further.

*Per Contra* Sri. S.U.Nazar submitted that in summons case, the trial commences when the accused appears or is brought before the Magistrate, and the word 'at any stage' found in Section 258 contemplates any stage after the appearance of the accused before the Magistrate and before passing of any order of acquittal or conviction.

5. As the issue referred to us pertains to the scope and extent of the powers available to a Magistrate under Section 258 of the Cr.P.C, it would be profitable to notice the statutory provisions that have a bearing on the said issue. Section 258 of the Cr.P.C. reads as under:

**“S. 258. Power to stop proceedings in certain cases.-** In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.”

It is clear from a reading of the aforesaid provision that in a summons-case instituted otherwise than upon a complaint, the Magistrate may stop the proceedings at any stage, and if he does so after the evidence of the principal witnesses is recorded, it will be an order of acquittal, and in any other case, he may direct the release of the accused, in which case, such release will have the effect of a

discharge. The wording of the Section is undoubtedly very wide and can cover any set of circumstances in which a Magistrate thinks that the proceedings in a summons case ought not to be continued any longer. No doubt, the power vested in the Magistrate is to be sparingly exercised only in appropriate cases, where proceeding with the case would amount to an abuse of the process of law or result in undue harassment of the accused or otherwise result in a miscarriage of justice. The primary intent of the legislation was to prevent the wastage of time of courts and to reduce backlog of cases, increasing time and economic efficiency.

6. The specific issue that arises for consideration in the case before us is whether the aforesaid provision enables a Magistrate to stop proceedings even in situations where, despite the best efforts of the prosecution, the appearance of an accused in a summons-case instituted otherwise than upon a complaint cannot be secured. A learned Single Judge of this Court in CrI.R.C.No.1869/2018 and connected cases (2019 (3) KLT 98), held that Section 258 of Cr.P.C. cannot be invoked for the reason that the presence of the accused could not be secured despite the initiation of coercive proceedings. It was further held that Section 258 can be invoked only in peculiar and unusual circumstances in cases wherein no *prima facie* case is made out, when the accusation does not actually constitute an offence, or

because the prosecution is bound to fail due to a technical defect. The law laid down as above was in a *suo motu* proceedings initiated by this Court against the orders of discharge passed by the Judicial Magistrate of the First Class III, Kollam in large number of cases invoking Section 258 of Cr.P.C owing to the failure of the prosecution to procure the presence of the accused. In a similar situation, another Single Bench in CrI.R.C.No.5/2018 took the view that the power under Section 258 of Cr. P.C. cannot be exercised to stop proceedings on the mere ground that the accused is absconding. We are called upon to decide the correctness of those decisions as well.

7. The aforementioned question has to be answered by interpreting the provisions of Section 258 in the context of the general scope and object of the provisions in the Cr.P.C. that deal with the commencement of proceedings in summons cases before the Magistrate and a trial thereof. The provisions of Section 206 of the Cr.P.C., which deal with the procedure for issuance of summons in cases of petty offence clearly indicate that the procedure for trial of petty offence is intended to effect an expeditious disposal thereof and that the Magistrate concerned has to keep in mind the primary objective of ensuring that public time and money are not wasted in pursuance of a futile exercise. Section 206, pursuant to its amendment through the Code of Criminal Procedure (Amendment)

Act, 2005 (25 of 2005) mandates that in petty cases, the Magistrate may issue the summons to the accused requiring him either to appear in person or by pleader on a specified date or, if he desires to plead guilty without appearing before the Magistrate, to transmit by post or by messenger, before the specified date, the said plea in writing and the amount of fine specified in the summons which shall not exceed the maximum fine prescribed for petty cases namely, Rs.1,000/-. The provision also mandates that if the fine amount is transmitted by the accused, then he can be convicted even in his absence and the amount paid by him adjusted towards the fine. *Clause 20* of the *Notes on clauses* explaining the reasons for the amendment of Section 206 in 2005 states that "The provisions of Section 206 are meant to enable a quick disposal of petty cases and to reduce congestion in the Court of Magistrates. Since the value of the money has gone down considerably, this clause seeks to amend sub-section (1) of that section to raise the limit of fine that can be specified in the summons from one hundred rupees to one thousand rupees." It is apparent therefore that the very idea behind the procedures stipulated for dealing with petty offence is to foster the disposal of cases which are numerous in number but petty in nature and that the economic impact of proceeding with a case must inform a Magistrate while deciding whether or not to proceed with the case. We have thought it necessary to deal with the above provision at the outset

for, it expressly indicates the object behind the expeditious process that is envisaged under the Cr.P.C. for trial of summons cases.

8. The power to try cases summarily is to be found in Sections 260 and 261 of the Cr.P.C. and the general procedure for trial of summons-cases by a Magistrates is found in Chapter XX of the Cr.P.C. which covers Sections 251 to 259. Though petty cases fall under the class of summary trial, Section 262 of Cr.P.C. provides that the procedure specified for the trial of summons cases shall be followed in such cases also. The normal rule in a summons case is that once the trial has commenced, it should reach its normal culmination, either the conviction or the acquittal of the accused. Section 258 is in the form of an exception to the said mandate. The said provision empowers the Magistrate to stop the proceedings at any stage, i.e after the issuance of the summons and before the completion of the trial. Such stoppage of proceedings can be initiated by the Magistrate in cases where he finds it difficult or impossible to proceed in the usual way by taking evidence as provided in Section 254 of Cr.P.C. Situations when the Magistrate can invoke Section 258 are not exhaustive. It depends upon the facts and circumstances of each case. The Magistrate has to apply his mind and exercise his discretion to determine if stoppage order is to be passed in the facts and circumstances of the case. The wordings "at any stage" in



Section 258 of Cr.P.C clearly indicates that the power under the said provision can be invoked in any set of circumstances in which the Magistrate thinks that the proceedings need not be continued. It is relevant to note that the provision contained in Section 258 does not provide that the power under the said provision can be exercised only in a particular situation. Thus, the law declared in CrI.R.C No.1869/2018 and connected cases (2019(3) KLT 98) that Section 258 of Cr. P.C. could be invoked only in those cases wherein no *prima facie* case is made out, the accusation does not constitute an offence, or the prosecution must fail due to a technical defect, and the said provision cannot be invoked for the reason that the presence of the accused could not be secured despite the initiation of coercive proceedings is not good law. We hold that in summons cases instituted otherwise than upon complaint, after the issuance of the summons, if the Magistrate is of the opinion that procuring the presence of the accused is an impossibility, owing to the incorrect/fake address of the accused in the final report or for any other valid reasons and the Magistrate is unable to proceed further in the matter, he may exercise his discretion under Section 258, to stop the proceedings and release the accused. In our view, not only is the power vested in the Magistrate sufficiently wide in its nature and scope but also in cases where the presence of the accused cannot be secured notwithstanding the earnest and sincere efforts of the

Prosecutor, the Magistrate is duty bound to exercise his/her power to stop the proceedings. The Magistrate must record reasons before stopping the proceedings and releasing the accused. It is made clear that when the summons has been served on the accused and if he is absconding, or when the accused is engaged in the clever act of dodging the summons, the Magistrate shall not invoke his powers under Section 258 of Cr.P.C. The effect of an order passed under Section 258 of Cr. P.C before procuring the presence of the accused, is only that of a discharge and hence as per Section 300(5) of Cr.P.C., in appropriate cases, the accused persons, if traced out later, can be tried again with the permission of the court which passed the said order.

9. Taking note of the fact that the provisions of Section 258 apply not only to petty offences but also to other summons-cases instituted otherwise than upon a complaint, we feel that the practice direction issued to the Magistrates should instruct them as follows:

- i. In the case of petty offences where the prosecution files a report stating unambiguously that despite its best efforts at locating the accused, it has not been successful in securing the presence of the accused before the Magistrate, the Magistrate concerned shall scrutinise the report submitted by the prosecution to satisfy himself/herself of the fact that reasonably sufficient steps

have been taken by the prosecution to ensure the presence of the accused **or** that the costs of ensuring the appearance of such accused far exceed the maximum fine that is prescribed under the Statute for the offence concerned. In the event of the Magistrate being satisfied of **either of** the aspects mentioned above, then it would be permissible for the Magistrate to record an order of stoppage of proceedings in accordance with Section 258 of the Cr.P.C.

- ii. In the case of those summons-cases instituted otherwise than upon a complaint, which do not qualify as petty offences, where the prosecution files a report stating unambiguously that despite its best efforts at locating the accused, it has not been successful in securing the presence of the accused before the Magistrate, the Magistrate concerned shall scrutinise the report submitted by the prosecution to satisfy himself/herself of the fact that reasonably sufficient steps have been taken by the prosecution to ensure the presence of the accused **and** that the costs of ensuring the appearance of such accused far exceed the maximum fine that is prescribed under the Statute for the offence concerned. In the event of the Magistrate being satisfied of **both of** the aspects mentioned above, then it would be permissible for the Magistrate to record an order of stoppage of proceedings in accordance with Section 258 of the Cr.P.C.
- iii. By way of abundant caution, we may clarify that we have dealt only with a situation where the prosecution expresses its inability to secure the presence of an

accused in a summons-case before the Magistrate concerned and not any other situation in which the provisions of Section 258 of the Cr.P.C. may come into play.

We place on record the appreciation for the able assistance rendered by the learned *amicus curiae* Sri. Nandagopal S. Kurup as well as the learned Senior Government Pleader Sri. S.U. Nazar.

**Sd/-**  
**DR. A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

**Sd/-**  
**DR. KAUSER EDAPPAGATH**  
**JUDGE**

**prp/**

APPENDIX OF O.P (CRL.) .NO.809/2023

PETITIONER'S EXHIBITS:

- Exhibit P1                    OM REGARDING 3RD PENDENCY REDUCTION DRIVE FROM  
1ST JULY 2013 TO DECEMBER 31,2013 DATED 01-08-  
2013
- Exhibit P2                    OM DATED 23/11/2015 REGARDING DISCHARGE OF  
CASES BEFORE THE SUBORDINATE COURTS INVOKING  
SECTION 258 CRPC
- Exhibit P3                    REPORTED JUDGMENT 2019(3) KLT 98
- Exhibit P4                    ORDER DATED 10/09/2018 IN CRL. R. C. 5/2018
- Exhibit P5                    PETTY CASE DISTRICT WISE CONSOLIDATION AS ON  
30/06/2023.
- Exhibit P6                    REPORT FROM REGISTRAR COMPUTERIZATION -  
DIRECTOR IT DATED 16/10/2023 REGARDING VIRTUAL  
COURTS
- Exhibit P7                    MINUTES OF THE ADMINISTRATIVE COMMITTEE  
MEETING DATED 22/08/2023
- Exhibit P8                    CONSOLIDATED STATEMENT OF DISPOSAL/WITHDRAWAL  
FROM PROSECUTION AND PENDENCY OF THE PETTY  
CASES.
- Exhibit P9                    NOTES APPROVED BY THE SCMS COMMITTEE
- Exhibit P10                    ORDERS OF THE HONOURABLE CHIEF JUSTICE  
REGADING REDUCING THE PENDENCY OF PETTY CASES  
BY INVOKING THE POWERS UNDER SECTION 258 OF  
CRPC.

RESPONDENTS ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE