

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K. BABU

TUESDAY, THE 28TH DAY OF FEBRUARY 2023 / 9TH PHALGUNA, 1944

CRL.MC NO. 798 OF 2023

(SEEKING TO DEFER ALL PROCEEDINGS IN SC.NO.461/2022 OF
ADDITIONAL SESSIONS COURT-I, MAVELIKKARA ARISING OUT OF CRIME
NO.897 OF 2021 OF ALAPPUZHA SOUTH POLICE STATION, ALAPPUZHA)

PETITIONERS/ACCUSED 16 TO 32:

- 1 HARI, AGED 42 YEARS, S/O SAINUDHIN, PANAKKAL
HOUSE, MANNANCHERY P.O., ALAPPUZHA, PIN - 688538.
- 2 SULFIKAR, AGED 34 YEARS
S/O SUBAIR, VALIYAPARAMBU HOUSE, PUNNAPPRA P.O.,
ALAPPUZHA, PIN - 688004.
- 3 SUDHEER, AGED 34 YEARS
S/O ABDUL SHUKOOR, SABEEL MANZIL KANDATHIL,
MANNANCHERY P.O., ALAPPUZHA, PIN - 688538.
- 4 ARSHAD, AGED 23 YEARS, S/O NAVAS, THURUTHIYIL
GARDENS, MANNANCHERY P.O., AMBANAKULANGARA,
ALAPPUZHA, PIN - 688538.
- 5 SAJEER K., AGED 36 YEARS
S/O KASIM, KOCHUPARAMBU, AVALOOKUNNU P.O.,
ALAPPUZHA, PIN - 688006.
- 6 SHIHAB, AGED 39 YEARS, S/O MUHAMMED KUNJ, CHIYAM
VELI, MANNANCHERY P.O., ALAPPUZHA, PIN - 688538.
- 7 ANOOP, AGED 30 YEARS
S/O MANI, THAILAM THARAYIL, SOUTH ARYAD,
AVALOOKUNNU P.O., ALAPPUZHA, PIN - 688006.

- 8 NAHAS P.B, AGED 32 YEARS,
S/O BASHEER, PUNNAKKAL, PONNAD, MANNANCHERY P.O.,
ALAPPUZHA, PIN - 688538.
- 9 AJI M., AGED 41 YEARS
S/O MAJEED, THOPPUVELI, NETAJI, NORTH ARYAD,
MANNANCHERY P.O., ALAPPUZHA, PIN - 688538.
- 10 ALI AHAMMED, AGED 19 YEARS,
S/O NAISAM, MACHANAD, MANNANCHERY P.O.,
ALAPPUZHA, PIN - 688538.
- 11 ASIF, AGED 20 YEARS
S/O SUDHEER, KUTTAMPARAMBIL, AVALOOKUNNU P.O.,
ALAPPUZHA, PIN - 688006.
- 12 SINU, AGED 31 YEARS, S/O KHAIS, BEEMAS MANZIL,
KANIYAM PARAMB, HEAD P.O., ALAPPUZHA - 688001.
- 13 SAIFUDHEEN, AGED 49 YEARS
S/O SHARAFUDHEEN, PUNNAKKAL PURAYIDAM,
VALIYAMARAM WARD, HEAD P.O.,
ALAPPUZHA, PIN - 688001.
- 14 SAIFUDHIN, AGED 38 YEARS
S/O SALI, SAIF MANZIL, SAKKARIYA WARD BAZAR, HEAD
P.O., ALAPPUZHA, PIN - 688001.
- 15 AJMAL, AGED 29 YEARS
S/O AYYOOB, KANIYAM PARAMBIL, LAJNATH WARD, HEAD
P.O., ALAPPUZHA, PIN - 688001.
- 16 SUHAIL, AGED 25 YEARS
S/O SIYAD, SHEEJA MANZIL, MULLATH WARD,
THIRUVAMBADI P.O., ALAPPUZHA, PIN - 688002.

17 NISHAD S, AGED 37 YEARS, S/O SHAMSUDHEEN, MACHANAD VELI, MANNANCHERY P.O., ALAPPUZHA, PIN - 688538.

BY ADVS.SRI.S.SREEKUMAR (SR.)
SRI.NANDAGOPAL S.KURUP
SRI.ABHIRAM T.K.

RESPONDENTS/STATE AND DEFACTO COMPLAINANT:

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

2 VINODINI SREENIVASAN, AGED 75 YEARS
W/O SREENIVASAN, KUNNUMPURATH, M.O. WARD,
ALAPPUZHA H.P.O., ALAPPUZHA, PIN - 688001.

ADDL.3 LISHA JOHNSON, AGED 46 YEARS
W/O. RANJEET SREENIVAS, KUNNUMPURATH HOUSE,
M.O.WARD, ALLAPUZHA -688001.

(IMPLEADED AS PER ORDER DATED 8/2/2023 IN
CRL.M.A.NO.2/2023)

R1 BY SRI.GRACIOUS KURIAKOSE, ADDITIONAL DIRECTOR
GENERAL OF PROSECUTIONS

R2 & R3 BY ADVS.SRI.P.VIJAYA BHANU (SR.)

SMT.SRUTHY N. BHAT

NIKITA J. MENDEZ

R.ANIL

B.RAMAN PILLAI (SR.) (R-260)

SUJESH MENON V.B. (S-1613)

THOMAS ABRAHAM (NILACKAPPILLIL) (K/857/2011)

THOMAS SABU VADAKEKUT (KL/001082/2017)

MAHESH BHANU S. (K/1620/2018)

RESSIL LONAN (K/1251/2020)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
28.02.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

"C.R."

ORDER

The prayer in this Crl.M.C. is as follows:-

"For these and other grounds to be urged at the time of hearing it is most humbly prayed that this Hon'ble Court may be pleased to defer all proceedings in S.C.No.461/2022 on the files of the Additional Sessions Court-I, Mavelikkara, arising out of Crime No.897/2021 of Alappuzha South Police Station, until further investigation is completed and supplementary final report in the said crime, as against petitioners/accused 16 to 32, in the interests of justice." (sic)

The petitioners are accused Nos.16 to 32 in Crime No.897/2021 of South Police Station, Alappuzha. The offences alleged against the petitioners and the other accused are punishable under Sections 143, 147, 148, 149, 449, 324, 326, 341, 354, 506, 427, 118, 120B, 201, 212, 109 and 302 of the Indian Penal Code.

2. The prosecution case is that the petitioners and the other accused (A1 to A35), who are activists of the Socialist Democratic Party of India/Popular Front of India (SDPI/PFI), maintained political enmity towards Bharatiya Janata Party – Rashtriya Swayamsevak Sangh (BJP-RSS) activists, as one of their members named Shan was hacked to death by the activists of BJP/RSS on 18.12.2021. In retaliation to the said murder, accused Nos.1 to 35 hatched a criminal conspiracy at the residence of accused No.14 at Ambalakulangara and nearby places and

also at the PFI District Committee Office, Alappuzha. Pursuant to the said conspiracy, on 19.12.2021 at 6.30 hours, accused Nos.1 to 12 formed themselves into an unlawful assembly, knowing that they were members of the such assembly and committed rioting armed with deadly weapons like hatchets, hammers, and sword sticks and trespassed into the house of the defacto complainant, entered the hall room and destroyed the movables placed there. On hearing the commotion, the son of the defacto complainant Sri.Renjith Sreenivasan came there, and then the accused attacked him with hammer, hatchet, and sword sticks causing grave injuries on the vital parts of his body and leading to his death.

3. Based on the first information statement given by the defacto complainant, the aforesaid crime was registered. The Dy.SP, Alappuzha, conducted the investigation and submitted the final report against accused Nos.1 to 15 before the Judicial First Class Magistrate Court-I, Alappuzha. The learned Magistrate took cognizance of the offences and committed the case to the Sessions Court, Alappuzha. The case was taken on the file of the Court as Sessions Case No.461/2022. Thereafter, pursuant to the orders of this Court in Tr.P. (Crl.)No.22/2022, the case was transferred to the Additional Sessions

Court-I, Mavelikkara.

4. The Investigating Officer has stated in the final report submitted against accused Nos.1 to 15 that a "split-charge" would be submitted against accused Nos.16 to 35, who had allegedly participated in the conspiracy which led to the murder of Sri.Renjith Sreenivasan. The challenge of the petitioners, who are accused Nos.16 to 32 in the crime, is that submission of the chargesheet against accused Nos.1 to 15 alone reserving the liberty to submit a "split-charge" against the rest of the accused is illegal. The petitioners contend that they could have been jointly tried along with the accused, who were sent for trial.

5. I have heard Sri.S.Sreekumar, the learned Senior Counsel, appearing for the petitioners, Sri.P.Vijayabhanu, the learned Senior Counsel, appearing for the defacto complainant, and Sri.Gracious Kuriakose, the learned Additional Director General of Prosecutions.

6. The learned Senior Counsel Sri.S.Sreekumar submitted that "split-charge" is alien to the Code of Criminal Procedure. The learned Senior Counsel submitted that sending accused Nos.1 to 15 alone for trial keeping the final report against the remaining accused to be submitted later in the nomenclature 'split-charge' is illegal, and the same would cause prejudice to the petitioners. The learned Senior

Counsel contended that the present investigating agency, on completion of investigation, should have submitted the final report in respect of all the accused to avoid embarrassment and prejudice to the petitioners. The learned Senior Counsel contended that Section 223 Cr.P.C. mandates that the persons accused of the principal offences in the course of the same transaction and the persons accused of participating in the conspiracy to commit the offences are to be charged and tried together. The learned Senior Counsel has taken me to various statements of the witnesses to indicate that the investigating agency has already collected evidence concerning to the alleged conspiracy aspects also.

7. The learned Senior Counsel Sri.P.Vijayabhanu submitted that it is premature for the petitioners to make a plea for joinder of charges as no chargesheet has been filed against them.

8. The learned Additional Director General of Prosecutions Sri.Gracious Kuriakose submitted that the Code permits the Investigating Officer to submit a "split-chargesheet" in a case where the investigation against the accused named in the said chargesheet is completed and to reserve the liberty to submit a supplementary or additional chargesheet after the completion of the investigation against the remaining accused. It is also submitted that the investigation

against the present petitioners is yet to be completed, and more relevant materials are to be collected. It is further submitted that as accused Nos.1 to 15 are in judicial custody, Section 170 Cr.P.C. mandates that they be sent to the jurisdictional Court for trial on completion of the investigation against them.

9. The learned ADGP relied on **State of Maharashtra v. Sharadchandra Vinayak Dongre and Ors. (AIR 1995 SC 231)** to substantiate his contentions.

10. Accused Nos.1 to 15 allegedly committed the murder of Sri.Renjith Sreenivasan pursuant to the conspiracy. According to the prosecution, accused Nos.16 to 35 are the persons who participated in the larger conspiracy which led to the commission of the murder.

11. The issues:

(1) Are the petitioners entitled to make a plea for deferring the trial against accused Nos.1 to 15, raising the point that they should have been jointly tried along with the other accused on the ground that the offences alleged were committed in the course of the same transaction ?

(2) Is there any illegality or irregularity in the Magistrate taking cognizance of the offences alleged against accused Nos.1 to 15 on the ground that the final report regarding the persons involved in the

conspiracy is sought to be submitted by way of a supplementary charge?

Issue No.1:

12. On a perusal of the materials placed before the Court, it is revealed that accused Nos.1 to 15 were the persons who allegedly committed the murder of Sri.Renjith Sreenivasan. The prosecution is attempting to implicate the rest of the accused on the allegation that they participated in the conspiracy in the commission of the murder.

13. Separate trial is the normal rule, and joint trial is an exception. Where there is the proximity of time or place or the unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. Section 223 of Cr.P.C. permits joint trial of more than one person where there is the proximity of time or the unity of purpose and design or continuity of action in respect of a series of acts. Where the same act is committed by several persons, it would not only be inconvenient but injudicious to try all the several persons separately. This is also important to prevent multiplicity of trials. If there is a criminal conspiracy to commit different offences, the persons who are members of that conspiracy may be charged and tried together if the offences are

committed in the course of the same transaction. (Vide: **State of A.P. v. Cheemalapati Ganeswara Rao and Another (1963 KHC 688)**).

14. The offences in the present case were committed in the course of the same transaction. What is important is that no final report or chargesheet as provided in Section 173 Cr.P.C. has been submitted against the petitioners. There is no charge, as referred to in Chapter XVII of the Code of Criminal Procedure, against them. The contention of the petitioners is based on the possibility that the Investigating Officer may submit a final report against them. Therefore, the plea of the petitioners that the trial of accused Nos.1 to 15 be deferred has no foundation.

Issue No.2:

15. Section 173 Cr.P.C. deals with the report of Police Officer on the completion of the investigation. Sub-section (1) says that every investigation under Chapter XII shall be completed without unnecessary delay. Sub-section (2) of Section 173 Cr.P.C. says that as soon as the investigation is completed, a report is to be submitted to the Magistrate having jurisdiction. If the report alleges the commission of a crime by an accused person, the report is not only called chargesheet or challan.

16. The questions that arise are:

(a) Can a Police Officer submit a final report against some of the accused where a number of offences are committed by several persons in pursuance of a conspiracy ?

(b) Can the Magistrate take cognizance of the final report so submitted against some of the accused ?

17. It is submitted from the Bar that the term "split-chargesheet" is alien to Criminal Procedure Code. The learned Senior Counsel appearing for the petitioners relied on **Vijayaraghavan and others v. CBI (1984 KLT 522)** and **Furtado v. C.B.I. (1996 (2) KLT 1)** in support of his contentions.

18. In **Vijayaraghavan**, this Court held that the investigation of a case relates to the entire transaction of which information is given and not merely one of the offences committed in the course of the transaction. Following **Vijayaraghavan**, in **Furtado**, a Division Bench of this Court held that when Section 173 Cr.P.C. speaks of completion of investigation, it must ordinarily be taken to refer to completion of investigation of all the facts and circumstances relating to the case, whether the transaction involves one offence or plurality of offences and a final report or chargesheet under Section

173 could be filed only after completion of the investigation in the case relating to all the offences arising in the case.

19. Where a number of offences are committed by several persons in pursuance of a conspiracy, it is usual to charge them with those offences as well as with the offence of conspiracy to commit those offences. If the alleged offences are said to have flown out of the conspiracy, the appropriate form of charge would be a specific charge for each of those offences along with the charge of conspiracy. [vide: **State of Andhra Pradesh v. Kandimalla Subbaiah and Another (AIR 1961 SC 1241)**].

20. A Three Judge Bench of the Apex Court in **State of Maharashtra v. Sharadchandra Vinayak Dongre and Ors.** (supra) had an occasion to consider an analogous question. In that case, the investigating agency submitted a chargesheet against some of the accused persons before the jurisdictional Court stating that the bulk of the evidence had been recorded, and evidence against those who had not been sent up for trial was yet to be collected. The Investigating Officer sought permission to conduct further investigation and submit an additional chargesheet later. When the matter came up before the High Court, it was held that the jurisdictional Magistrate could not have taken cognizance as it was not justified to proceed with the matter

when the Investigating Officer opined that the chargesheet was incomplete. While dealing with the facts, the Apex Court observed that if the police report and the material filed therewith were sufficient to satisfy the Magistrate that he should take cognizance, his power is not fettered by the label that the investigating agency chose to give to the report submitted by it under Section 173(2) Cr.P.C. The Apex Court added that merely because the prosecution sought to file "supplementary chargesheet", it could not affect the Magistrate to take cognizance if he was otherwise satisfied from the materials placed before him along with the chargesheet that cognizance of the offence was required to be taken. It is the jurisdiction of the Magistrate and the Magistrate alone to decide whether the material placed by the prosecution with the report was sufficient to take cognizance or not. The power of the Magistrate to take cognizance cannot be controlled by the Investigating Officer, whose duty is only to investigate and place the facts and the evidence before the Magistrate. The Apex Court further observed that the prayer of the investigating agency seeking permission to further investigate and submit a supplementary chargesheet could not vitiate the cognizance taken by the Chief Judicial Magistrate nor denude him of his jurisdiction to take cognizance of the offence.

21. The necessary conclusion is that, in a case where many persons commit a number of offences in pursuance of a conspiracy, and the investigating agency completed the investigation against the accused who allegedly committed the principal offences pursuant to the conspiracy and the investigation against those who are involved in the conspiracy is yet to be completed, the investigating agency may submit a final report or chargesheet against the persons with respect to whom the investigation is completed and the Court concerned is competent to take cognizance of the offences based on the final report. After collecting sufficient materials the investigating agency may later submit a supplementary chargesheet against the remaining accused. This power can be deduced from Section 173 of Cr.P.C.

22. However, once the investigating agency completed the investigation of all the facts and circumstances relating to the case against all the accused, the Code of Criminal Procedure does not permit the Investigating Officer to submit a chargesheet or a final report against some of the accused and defer filing of chargesheet against the remaining accused.

23. In the present case, the investigating agency completed the investigation against accused Nos.1 to 15 who allegedly committed the principal offences, and submitted final report. The jurisdictional

Court took cognizance and proceeded with the matter. I find no illegality in the course adopted by the Courts below.

The Crl.M.C. lacks merits and it stands dismissed.

Sd/-
K.BABU
Judge

TKS

APPENDIX OF CRL.MC 798/2023

PETITIONERS' ANNEXURES:

- Annexure A1 TRUE COPY OF THE FIRST INFORMATION REPORT ALONG WITH THE FIRST INFORMATION STATEMENT DATED 19.12.2021 IN CRIME NO. 897/2021 OF ALAPPUZHA SOUTH POLICE STATION, ALAPPUZHA.
- Annexure2 TRUE COPY OF THE FINAL REPORT IN SC NO. 461/2022 ON THE FILES OF THE ADDITIONAL SESSIONS COURT-I, MAVELIKKARA.
- Annexure A3 TRUE COPY OF THE 161 STATEMENTS OF CWS 1 TO 35 CITED BY THE PROSECUTION IN ANNEXURE A2 FINAL REPORT IN SC NO. 461/2022 ON THE FILES OF THE ADDITIONAL SESSIONS COURT-I, MAVELIKKARA.
- Annexure A4 TRUE COPY OF THE REMAND REPORT DATED 22.12.2021 PERTAINING TO PETITIONERS 3, 4, 10, 11, AND 17 IN CRIME NO. 897/2021 OF ALAPPUZHA SOUTH POLICE STATION, ALAPPUZHA.
- Annexure A5 TRUE COPY OF THE REMAND REPORT DATED 03.10.2022 PERTAINING TO THE 5TH PETITIONER IN CRIME NO. 897/2021 OF ALAPPUZHA SOUTH POLICE STATION, ALAPPUZHA.
- Annexure A6 TRUE COPY OF THE REMAND REPORT PERTAINING TO THE 9TH PETITIONER DATED 19.01.2022 IN CRIME NO. 897/2021 OF ALAPPUZHA SOUTH POLICE STATION, ALAPPUZHA.
- Annexure A7 TRUE COPY OF THE REMAND REPORT PERTAINING TO THE 7TH ACCUSED DATED 08.01.2022 IN CRIME NO. 897/2021 OF ALAPPUZHA SOUTH POLICE STATION, ALAPPUZHA.
- Annexure A8 TRUE COPY OF THE REMAND REPORT PERTAINING TO THE 3RD PETITIONER DATED 31.12.2021 IN CRIME NO. 897/2021 OF ALAPPUZHA SOUTH POLICE STATION, ALAPPUZHA.
- Annexure A9 TRUE COPY OF THE REMAND REPORT PERTAINING TO THE 4TH PETITIONER DATED 02.01.2022 ACCUSED IN CRIME NO. 897/2021 OF ALAPPUZHA SOUTH POLICE STATION, ALAPPUZHA.

Annexure A10 TRUE COPY OF THE REMAND REPORT PERTAINING TO THE 2ND PETITIONER DATED 10.03.2022 IN CRIME NO. 897/2021 OF ALAPPUZHA SOUTH POLICE STATION, ALAPPUZHA.

Annexure A11 TRUE COPY OF THE ORDER DATED 09.01.2023, IN TR. P(CRL) NO. 86/2022 PASSED BY THIS HON'BLE COURT.

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