

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 18TH DAY OF MARCH 2024 / 28TH PHALGUNA, 1945

OP(CRL.) NO. 235 OF 2024

**AGAINST THE ORDER DATED 17.11.2023 IN C.M.P.No.4516/2023 in ST
NO.977 OF 2022 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,ALATHUR**

PETITIONERS:

- 1 FAIZAL , AGED 27 YEARS
S/O LATE KASSIM THEKKUMANNU, THONIKADAVU, PADUR
ALATHUR, PALLADIA, PALAKKAD, PIN - 678541**
- 2 JAMEELA, AGED 50 YEARS
W/O LATE KASSIM THEKKUMANNU, THONIKADAVU, PADUR
ALATHUR, PALLADIA, PALAKKAD, PIN - 678541
BY ADVS.
R.PRADEEP KUMAR
MATHEW KURIAKOSE**

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA ERNAKULAM, PIN - 682031**
- 2 THE STATION HOUSE OFFICER ,
ALATHUR POLICE STATION PALLADIA,
PALAKKAD, PIN - 678541**

BY SRI.G.SUDHEER-PUBLIC PROSECUTOR

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
18.03.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

CR

K.BABU, J

O.P(Crl.)No.235 of 2024

Dated this the 18th day of March, 2024

J U D G M E N T

The challenge in this Original Petition is to the order dated 17.11.2023 in C.M.P.No.4516/2023 in S.T.No.977/2022 on the file of the Judicial First Class Magistrate Court I, Alathur.

2. Petitioner No.2 is the defacto complainant in S.T. No.977/2022 (which arose from Crime No.399/2022 of Alathur Police Station) on the file of the Judicial First Class Magistrate Court, Alathur. Petitioner No.1, who is her son, is the accused in S.C.No.945/2022 (which arose from Crime No.212/2022 of Alathur Police Station) on the file of the Special Court for SC/ST (Prevention of Atrocities) Act Cases, Mannarkkad. The petitioners filed an application seeking committal of S.T.No.977/2022 for facilitating trial by the Special Court for SC/ST (Prevention of Atrocities) Act Cases, Mannarkkad, where S.C. No.945/2022 is pending on the ground that the two cases are 'cross cases'.

3. The incident which led to the registration of Crime No.212/2022 of Alathur Police Station allegedly occurred on 13.2.2022 between 21 hrs and 22 hrs at the residence of the defacto complainant therein at Thonikkadavu. Petitioner No.1 and the other accused are alleged to have committed the offences punishable under Sections 447, 341 and 323 r/w Section 34 of the IPC and Section 3(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

4. The petitioners alleged that on the same day (13.2.2022) at the same place of occurrence at 22 hrs., the incident which led to the registration of the Crime No.399/2022 of Alathur Police Station had occurred.

5. The petitioners contended that the time of occurrence in S.C.No.945/2022 is between 21 hrs and 22 hrs., whereas the time of occurrence of the case pending before the Magistrate's Court (S.T.No.977/2022) is 22 hrs. The petitioners further pleaded that the scene of occurrence is also the same.

6. The learned Magistrate found that the two cases cannot be considered as 'case and counter case' for the following reasons:

- a) The defacto complainant in S.T.No.977/2022 is not an accused in S.C.No.945/2022.

b) The place of occurrence and the time of occurrence in both cases are different.

7. Heard the learned counsel for the petitioners and the learned Public Prosecutor.

8. The learned counsel for the petitioners submitted that the finding of the learned Magistrate that the time of occurrence is different cannot be sustained as the time of occurrence in S.C. No.945/2022 is between 21 hrs. and 22 hrs., whereas the time of occurrence in the case now pending before the learned Magistrate is 22 hrs. It is submitted that the incident in S.T.No.977/2022 is the continuation of the incident in the other case. It is further submitted that the place of occurrence is also the same.

9. Going by the contentions, it is seen that whether the time of occurrence and places of occurrence are one and the same is a question of fact that cannot be decided at this stage. Prima facie, the petitioners could place materials to show that the cases are 'cross cases'.

10. It is trite that 'cross cases' shall be tried by the same Court. A Division Bench of the Madras High Court in **Goriparthi Krishtamma and others v. Emperor (1929 SCC OnLine Mad 429) = (1929 MWN**

881) suggested that a case and counter case arising out of the same affair should always, if practicable, be tried by the same court; and each party would represent themselves as having been the innocent victims of the aggression of the other.

11. In **Krishna Pannadi v. Emperor** (AIR 1930 Mad 190), the Court held that there is no clear law regarding the procedure in counter cases, a defect that the legislature ought to remedy. It is a generally recognized rule that such cases should be tried in quick succession by the same Judge, who should only pronounce judgment once the hearing of both cases is finished.

12. The judicial precedents underline the reason for such a procedure as (a) it prevents the danger of an accused being convicted before his whole case is before the court, (b) it deters conflicting judgments being delivered upon similar facts (c) in reality, the case and the counter-case are different or conflicting versions of one incident to all intents and purposes.

13. In **Nathi Lal v. State of U.P (1990 SCC (Cri) 638)** on the requirement of consideration of case and counter case one after other by the same judge, the Apex Court observed thus:

"We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment **in that case**. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other."

14. In **Sudhir and others v. State of M.P. (2001) 2 SCC 688** the Supreme Court, following **Nathi Lal** (supra), reiterated the need to follow the above procedure as a necessary legal requirement for preventing conflicting decisions regarding one incident.

15. The sessions case has been committed and is pending trial before the Special Court for SC/ST Act Cases, Mannarkkad. However, S.T.No.977/2022 pending before the learned Magistrate, cannot be committed in accordance with Section 209 of Cr.P.C. The learned Magistrate has ample power to commit the case to the Court of Session though none of the offences involved is exclusively triable by a sessions

court invoking Section 323 of Cr.P.C.

16. Section 323 of Cr.P.C reads thus:

“323. Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.

If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provision of Chapter XVIII shall apply to the commitment so made.”

17. It is evident from the statute that the power under Section 323 of Cr.P.C may be invoked by the learned Magistrate at any stage of the proceedings prior to the signing of the judgment.

18. The key requirement for the invocation of the power under Section 323 of Cr.P.C is that the learned Magistrate concerned must feel that the case is one which ought to be tried by the Court of Sessions (See **Archana v. State of West Bengal and another** (2023 KHC Online 7081))

19. In the present case, this Court has held that prima facie, the petitioners could establish that the cases are case and counter case. Therefore, the case pending before the learned Magistrate is one which ought to be tried by the Court which tries the sessions case.

In the result, the order dated 17.11.2023 in C.M.P.No.4516/2023 in S.T.No.977/2022 on the file of the Judicial First Class Magistrate Court, Alathur stands set aside. The learned Magistrate shall commit S.T.No.977/2022 to the Court of Sessions, Palakkad. The learned Sessions Judge shall make over the case to the Special Court for SC/ST Act Cases, Mannarkkad. The learned Special Judge shall proceed with the trial in the cases in accordance with the principles discussed above.

The Original Petition (Crl.) is allowed as above.

Sd/-

K.BABU

JUDGE

ab

APPENDIX OF OP(CRL.) 235/2024

PETITIONER EXHIBITS

- Exhibit P 1** A TRUE COPY OF FIR NO.212/2022 DATED 16.03.2022 OF ALATHUR POLICE STATION
- Exhibit P 2** A TRUE COPY OF THE SCENE MAHAZAR IN CRIME 212/2022 ALATHUR POLICE STATION ALONG WITH TYPED COPY
- Exhibit P 3** A TRUE COPY OF SCENE MAHAZAR IN CRIME 399/2022 ALATHUR POLICE STATION ALONG WITH TYPED COPY
- Exhibit P 4** A TRUE COPY OF F.I.R NO 399 DATED 02/05/2022 ALATHUR POLICE STATION
- Exhibit P 5** A TRUE COPY OF THE ORDER IN CMP 4516/23 DATED 17/11/2023 ISSUED BY THE JUDICIAL FIRST CLASS MAGISTRATE ALATHUR

RESPONDENS EXHIBITS: NIL