

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 2ND DAY OF APRIL 2024 / 13TH CHAITHRA, 1946

CRL.REV.PET NO. 666 OF 2023

**CRIME NO.91/2019 OF Irinjalakuda Police Station, Thrissur
AGAINST THE ORDER IN CRL.M.P.NO.4176/2023 IN CC NO.1375 OF
2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,IRINJALAKUDA**

REVISION PETITIONERS:

- 1 FAZID
AGED 32 YEARS
S/O MUHAMMED FAISAL, PALAYAMKOTT HOUSE,
KUTTANGACHIRA-SURABHI NAGAR, IRINJALAKUDA, PIN -
680121**
- 2 MUHAMMED FAISAL
AGED 64 YEARS
S/O ABDUL AZIZ, PALAYAMKOTT HOUSE, KUTTANGACHIRA-
SURABHI NAGAR , IRINJALALKUDA, PIN - 680121**
- 3 FAZIL
AGED 22 YEARS
S/O MUHAMMED FAIASL, PALAYAMKOTT HOUSE,
KUTTANGACHIRA-SURABHI NAGAR,
IRINJALAKUDA, PIN - 680121**
- 4 MUMTAZ
AGED 52 YEARS
W/O MUHAMMED FAISAL, PALAYAMKOTT HOUSE,
KUTTANGACHIRA-SURABHI NAGAR,
IRINJALAKUDA, PIN - 680121
BY ADVS.
MANSOOR.B.H.
SAKEENA BEEGUM**

RESPONDENT/S:

- 1 XXXXXXXXXXXX
XXXXXXXXXXXX XXXXXXXXXXXX**
- 2 STATE OF KERALA
REEP.BY TH PUBLIC PROSECUTOR, HIGH COURT OF
KERALA,ERNAKULAM, PIN - 682031**
- 3 STATION HOUSE OFFICER, IRINJALAKUDA POLICE STATION,
IRINJALAKUDA, PIN - 680121**

**BY ADVS.
C.Y. VINOD KUMAR
K.A. JALEEL (K/80/1981)**

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 02.04.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R**O R D E R**

This Criminal Revision Petition has been filed under Section 397 r/w Section 401 of Cr.P.C. The revision petitioners are the accused Nos.1 to 4 in C.C.No.1375/2021 on the files of the Judicial First Class Magistrate Court, Irinjalakkuda, where the prosecution alleges commission of the offences punishable under Sections 323, 324, 294(b), 354, 354-A(1), 354-C, 406 and 498A r/w Section 34 of IPC.

2. Heard the learned counsel for the revision petitioners, the learned counsel for the 1st respondent and the learned Public Prosecutor.

3. In this matter, CrI.M.P.No.4176/2023 was filed by the petitioners before the Magistrate Court seeking discharge on the allegations that no offences are made out from the prosecution records. It is submitted by the learned counsel for the revision petitioners that going by the order impugned, the same is not a reasoned order and nothing stated in the order to justify the dismissal of the discharge petition. He also submitted that the petitioners deserve discharge for want of sufficient materials to attract the offences alleged as per the prosecution records.

4. It is submitted further that the discharge petition should not be dismissed by a cryptic and non-speaking order and the order should be a reasoned order. The decision of this Court in **Nimmy Mathew v. State of Kerala** reported in (2023 KHC 9273) has been placed before this Court. Another decision of the Apex Court in **Ghulam Hassan Beigh v. Mohammad Maqbool Magrey and Others** reported in (2022 KHC 6734) has also been placed. In paragraph 23 of the **Ghulam Hassan Beigh's** case (supra) the Apex Court dealt with the essentials of framing charges under Section 227 of Cr.P.C held thus:

“In **Sajjan Kumar v. CBI** [(2010) KHC 4691 : (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] : 2010(2) KLD 603 : 2010(10) SCALE 22 : 2010 (95) Aaic 115 : 2010(3) SCC (Cri) 1397, this Court had an occasion to consider the scope of **Sections 227** and **228** CrPC. The principles which emerged therefrom have been taken note of in para 21 as under: (SCC pp. 37677)

“21. On consideration of the authorities about the scope of **Sections 227** and **228** of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under **Section 227** CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot

be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of S.227 and S.228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

5. As far as the legal position regarding the essentials of an order of discharge is well settled. While passing an order of discharge by allowing the same or dismissing the same the Courts must have to state reasons for passing such orders and an order without recording reasons in the form of cryptic and non-speaking stature would not sustain under the law.

6. The learned Public Prosecutor as well as the learned counsel for the defacto complainant submitted that going through the order impugned, containing seven paragraphs, the learned Magistrate addressed the entire prosecution case and also perused the statements of the witnesses as well as the defacto complainant to find that plea of discharge could not be allowed, since prosecution allegations made out from the prosecution records.

7. On a reading of the order, the learned Magistrate discussed the entire allegations in minute niceties while addressing the prosecution case and found that clear allegations were made against all the accused which would attract the offence under Section 498A of IPC. On perusal of prosecution records, the same would substantiate prima facie that the allegations would constitute an offence under Section 498A of IPC, prima facie against all the petitioners herein. Therefore, this is not a case of discharge and the matter shall go for trial.

In view of the above discussion, this Criminal Revision Petition is found to be meritless and it is dismissed accordingly.

Sd/-

A. BADHARUDEEN

JUDGE

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