

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

MONDAY, THE 9TH DAY OF OCTOBER 2023 / 17TH ASWINA, 1945

CRL.REV.PET NO. 931 OF 2023

AGAINST THE ORDER/JUDGMENT CC 389/2021 OF CHIEF JUDICIAL

MAGISTRATE, ALAPPUZHA

REVISION PETITIONER/APPELLANT/ACCUSED NO.1:

NIMMY MATHEW,
AGED 34 YEARS,

BY ADVS.
MANSOOR.B.H.
SAKEENA BEEGUM

RESPONDENTS/STATE/COMPLAINANT:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, PIN - 682031
- 2 STATION HOUSE OFFICER,
NORTH POLICE STATION,
ALAPPUZHA, PIN - 688001

BY SMT. SEENA C., PUBLIC PROSECUTOR FOR R1 & R2

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 09.10.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

N. NAGARESH, J.

Crl.R.P. No.931 of 2023

Dated this the 9th day of October, 2023

ORDER

The petitioner, who is the 1st accused in C.C. No.389 of 2021 pending trial on the files of the Chief Judicial Magistrate's Court, Alappuzha, is aggrieved by the order dated 25.08.2023 in CMP No.2035 of 2023 in C.C. No.389 of 2021.

2. The Station House Officer, Alappuzha registered Crime No.894 of 2018 against the petitioner for offences punishable under Sections 201, 406, 420, 468 and 471 read with Section 34 IPC. The prosecution alleged that the revision petitioner was the Cashier of Kavitha ITC from 21.04.2014 to 03.03.2016. The 2nd accused is the petitioner's husband who

was working as Office Assistant in the Company. Both the husband and wife together, in furtherance of their common intention to cheat the Company, misappropriated an amount of ₹37,02,753/- and destroyed the receipt books for the relevant period. They have also made alterations and corrections in the cash book. On these premises, the petitioner and her husband were alleged to have committed offences punishable under Sections 201, 406, 420, 468 and 471 read with Section 34 IPC.

3. On receipt of report from the Police, the petitioner filed application under Section 239 of the Code of Criminal Procedure seeking discharge. The Chief Judicial Magistrate considering the application of the petitioner passed the order dated 25.08.2023 rejecting the application for discharge.

4. The counsel for the petitioner would submit that the impugned order dated 25.08.2023 of the Chief Judicial Magistrate is devoid of any reason. The Hon'ble Apex Court in the judgment in ***Ghulam Hassan Beigh v. Mohammad Maqbool Magrey and others*** [(2022) SCC Online SC 913]

has held that while considering an application for discharge under Section 239 of the Code of Criminal procedure, the court cannot act as a postman. The court has to apply its mind and consider whether there are *prima facie* materials to establish the allegations. The order of the Chief Judicial Magistrate impugned in this revision petition is a cryptic and non-speaking order. It does not give any reason for rejecting the application for discharge. It does not deal with anything on the evidence available on records.

5. The counsel for the petitioner further submitted that even though marshalling of evidence is not contemplated at the stage of Section 239 of the Code of Criminal procedure, the order of the Chief Judicial Magistrate should disclose the availability of *prima facie* materials to constitute the offence alleged by the prosecution. The impugned order does not disclose any such material. The impugned order is therefore liable to be set aside.

6. Public Prosecutor entered appearance and resisted the revision petition. The Public Prosecutor submitted that this is a case where a husband and wife have cheated their own employer. The wife was working as Cashier and her husband was acting as an Office Assistant. Both of them swindled lakhs of rupees. It is on the basis of a complaint received from the employer that the proceedings were initiated.

7. The report submitted by the police after a proper investigation would disclose *prima facie* material pointing towards the guilt of the petitioner. A mini trial is not warranted at the stage of discharge petition. The order of the Chief Judicial Magistrate is not liable to be interfered with on all or any of the grounds urged by the revision petitioner, argued the Public Prosecutor.

8. I have heard the learned counsel for the revision petitioner and the learned Public Prosecutor representing respondents 1 and 2.

9. The specific allegation is that the petitioner along with the 2nd accused, who is her husband, who were working in a private Company, swindled huge amount of money. The police has investigated the matter and submitted a report.

10. When the petitioner urged before the Chief Judicial Magistrate that the complaint and the police report do not disclose any offence and that the petitioner is entitled to discharge, the Chief Judicial Magistrate has disposed of the Section 239 application as per order dated 25.08.2023. The relevant portion of the impugned order reads as follows:

Heard both sides.

On hearing both sides, having gone through the case records and rival contentions, it is held that, the offences alleged against the accused are grave in nature. The role of the accused in the alleged misappropriation and forgery cannot be ascertained at this stage and the same can be possible only after the completion of trial. Prima facie there are materials to proceed against the accused. If at all the accused is aggrieved, she can prove her case by raising appropriate contentions during trial. So, the petition cannot be allowed and liable to be dismissed.

The impugned order does not disclose the materials on the basis of which the Chief Judicial Magistrate has taken a

decision. There is no statement in the order as to which materials available in the records would *prima facie* disclose the offence alleged against the petitioner. The impugned order dated 25.08.2023 is therefore devoid of any reason.

11. The Hon'ble Apex Court has held in the judgment in ***Ghulam Hassan Beigh*** (supra) that the material which is required to be evaluated by the court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Considering the case on hand in the background of the judgment of the Apex Court, I am of the view that the impugned order does not disclose reasons for rejection. In view of the above, the order dated 25.08.2023 is liable to be set aside.

12. The order dated 25.08.2023 in CMP No.2035 of 2023 in C.C. No.389 of 2021 of the Court of the Chief Judicial Magistrate, Alappuzha is therefore set aside. The Chief Judicial Magistrate, Alappuzha is directed to reconsider the application submitted by the petitioner and pass a speaking order thereon. This shall be done within a period of one month. It is made clear that I have not pronounced anything on the merit on the eligibility of the petitioner for discharge.

Criminal Revision Petition is allowed as above.

**Sd/-
N. NAGARESH
JUDGE**

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APPENDIX OF CRL.REV.PET 931/2023

PETITIONER'S ANNEXURES

ANNEXURE A CERTIFIED COPY OF THE ORDER DATED
25.08.2023 IN C.M.P. NO.2035/2023 IN
C.C. NO.389/2021 OF CHIEF JUDICIAL
MAGISTRATES COURT, ALAPPUZHA.