



2024/KER/8708

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 6<sup>TH</sup> DAY OF FEBRUARY 2024 / 17TH MAGHA, 1945

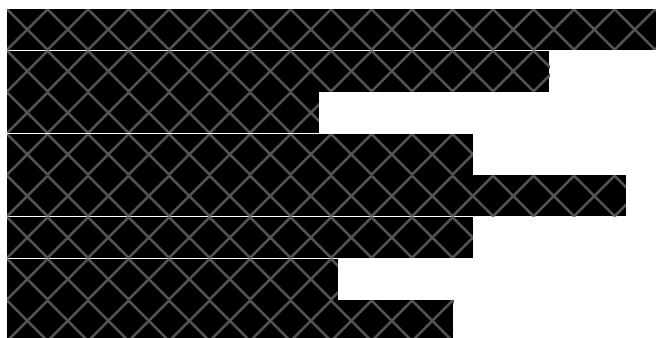
CRL.MC NO. 6900 OF 2023

CRIME NO.21/2022 OF Kalamassery Police Station, Ernakulam

AGAINST CC 113/2022 OF JMFC, KALAMASSERY

PETITIONER/ACCUSED:

BICHITRA MOHANTY



BY ADVS.

JINU JOSEPH

N.RAGHUNATH

P.K.MOHAMED JAMEEL

ANU PHILIPOSE

MATHEW.K.S.

K.P.BHAGYESH

RESPONDENT/COMPLAINANT:

STATE OF KERALA

REPRESENTED BY PUBLIC PROSECUTOR,

HIGH COURT OF KERALA,

ERNAKULAM - 682031

(CRIME NO. 21 OF 2022 OF KALAMASSERY POLICE  
STATION)

SMT. SREEJA V. , PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 23.01.2024, THE COURT ON 06.02.2024 PASSED THE  
FOLLOWING:



**BECHU KURIAN THOMAS, J.**

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**Crl.M.C. No.6900 of 2023**  
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Dated this the 6<sup>th</sup> day of February, 2024

**ORDER**

Petitioner seeks for a direction to set aside the judgment dated 10.10.2022 in C.C. No. 113 of 2022 on the files of the Judicial First Class Magistrate's court, Kalamassery, which arose from Crime No.21 of 2022 of Kalamassery Police Station. The offences alleged against the petitioner were only under sections 279 and 338 of the Indian Penal Code, 1860 (for short 'IPC').

2. The petitioner hails from Orissa. On 03.01.2022 at around 7.30 pm, an accident occurred. Petitioner was allegedly driving a motorcycle bearing registration No.KL-20-F-6047. He is alleged to have driven the vehicle rashly and negligently and, while overtaking, collided with a scooter bearing number KL-07-CU-9435, causing serious injuries to the driver of the scooter and committed the offences under sections 279 and 338 of IPC. Petitioner alleges that since he is illiterate in Malayalam language, he was told by the police to reply to the Magistrate to plead guilty, and he abided by the said advice and pleaded guilty on 10.10.2022, without realizing the implication. By judgment dated 10.10.2022, the learned Magistrate imposed a fine amount of Rs.1000/- for each of the



offences. Petitioner is stated to have remitted the fine amount in court.

3. However, after the case was disposed of based on the plea of guilt, the injured allegedly succumbed to his injuries, and therefore, the case was altered to section 304A IPC and petitioner has been served with a summons intimating him that the offence under sections 279 and 338 of IPC has been altered to section 304A of the IPC. According to the petitioner, at the time when he pleaded guilty, the offence alleged against him was only under sections 279 and 338 of IPC and now, since he is facing charges for the offence under section 304A IPC, he ought to be permitted to backtrack from the plea of guilt and contest the case on merits.

4. Petitioner contends that he pleaded guilty without properly understanding the question put forward by the Magistrate and that since the charge has now been altered to section 304A IPC due to the subsequent death of the injured, the judgment of the Judicial First Class Magistrate's Court, Kalamassery in C.C. No.113 of 2022 ought to be set aside and he must be permitted to contest the case on merits.

5. I have heard Sri. Jinu Joseph, the learned counsel for the petitioner, as well as Smt.Sreeja V., the learned Public Prosecutor.

6. The accident occurred on 03.01.2022, and the final report was filed on 04.02.2022, arraying the petitioner as an accused for the offences under sections 279 and 338 IPC. On 10.10.2022, the accused pleaded



guilty for the offences under sections 279 and 338 IPC, and he was sentenced to Rs.1000/- for each of those offences. Since the injured died later, the charge has been altered, and now the petitioner has been served with a summons for the offence under section 304A IPC.

7. Petitioner had pleaded guilty to the offences under sections 279 and 338 IPC and not under section 304A IPC. However, if the plea of guilt remains, the petitioner's defence can be prejudiced since the charge has been altered to section 304A IPC.

8. In this context, it has to be noticed that in **Raseen Babu v. State of Kerala** (2021 (4) KLT 22), this Court had, after analysing the provisions of sections 229, 241 and 252 IPC, held that before acting upon a plea of guilt the following requirements ought to be complied with; (i) the Magistrate should frame the charge specifying the offences alleged against the accused, (ii) the charge should be read over and explained to the accused, (iii) the accused should be asked whether he pleads guilty of the offences with which he is charged, (iv) the accused should plead guilty after understanding the seriousness of the allegations and the implications of pleading guilty. The plea should be voluntary and expressed in clear and unambiguous terms, (v) the Magistrate should record the accused plea of guilty in the words of the accused to the extent possible, (vi) the Magistrate, after considering all relevant factors, should exercise the discretion and decide whether to accept the plea of guilty or not; and (vii) if



the plea is accepted, the accused can be convicted and suitable punishment be imposed.

9. The plea of guilt and the consequent conviction is not an empty formality, and the procedure has to be strictly followed. Whenever the pleading of guilt is questioned, unless the procedure has been complied with as laid down above, sanction cannot be accorded to such a plea. In the instant case, it is evident that the plea of guilt made by the accused was not for the offence under section 304A IPC. When the accused pleaded guilty, the offence was only under sections 279 and 338 IPC. The situation would have been different had the accused been informed that the offence included section 304A IPC as well. Hence, the plea of guilt for the offence under sections 279 and 338 of IPC in C.C. No. 113/2022 cannot be said to be voluntary. Further, the accused has a right to a fair trial. If the plea of guilt made at a time when the offence charged was only under sections 279 and 338 IPC is allowed to remain, despite the charge being altered, petitioner's rights to a fair trial may get affected. Such a procedure will be unjust and unfair. In such circumstances, the conviction and subsequent sentence imposed upon the petitioner on the basis of his plea of guilt in C.C. No.113 of 2022 on the files of the Judicial First Class Magistrate's Court, Kalamassery, is liable to be set aside.

Accordingly, the conviction and sentence on the accused by the judgment dated 10.10.2022 and the plea of guilt made by the petitioner in



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C.C. No.113 of 2022 on the files of the Judicial First Class Magistrate's Court, Kalamassery, are set aside. The petitioner will be entitled to contest C.C. No.860 of 2023 on merits without referring to the plea of guilt in C.C. No.113 of 2022.

CrI.M.C. is allowed as above.

**Sd/-**

**BECHU KURIAN THOMAS  
JUDGE**

vps



APPENDIX

PETITIONER ANNEXURES

- Annexure A1                    A COPY OF THE FINAL REPORT IN THE ABOVE  
CRIME NO. 21/2022 DATED 04-02-2022
- Annexure A2                    THE JUDGEMENT DATED 10-10-2022 IN CC NO.  
113/2022
- Annexure A3                    THE PLEA RECORDED STATEMENT
- Annexure A4                    THE JUDGMENT OF THIS COURT IN RASEEN  
BABU V. STATE OF KERALA (2021 (4) KLT  
22)
- Annexure A5                    TRUE COPY OF THE JUDGMENT IN CRL.M.C.  
NO. 2293/2023 DATED 22-03-2023
- Annexure A6                    TRUE COPY OF THE SUMMONS DATED  
14-09-2023 ISSUED BY THE FIRST CLASS  
MAGISTRATE COURT KALAMASSERY IN CC NO.  
860/2023