



IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
THURSDAY, THE 25TH DAY OF JANUARY 2024 / 5TH MAGHA, 1945
CRL.MC NO. 818 OF 2024

CRIME NO.178/2022 OF VANITHA POLICE STATION,
PATHANAMTHITTA, Pathanamthitta
SC 390/2022 OF FAST TRACK SPECIAL COURT, PATHANAMTHITTA

PETITIONER/SECOND ACCUSED:

LITTY THOMAS, AGED 37 YEARS,
W/O. PONSON JOHN, KRIPALAYAM VEEDU,
NEAR KARIVILAKKADU DEVI TEMPLE AIKKADU NORTH,
KODUMON P.O, PATHANAMTHITTA DISTRICT, PIN - 691555.

BY ADVS.
V.PHILIP MATHEWS
E.RADHAKRISHNAN
ABY SKARIA
SEBA ANNA SIMON

RESPONDENT/STATE:

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

SR.PUBLIC PROSECUTOR SRI.RENJIT GEORGE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 25.01.2024, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

**ORDER**

The 2nd accused in Sessions Case No.390 of 2022 on the file of Fast Track Special Court, Pathanamthitta, is invoking the inherent jurisdiction of this Court under Section 482 of Cr.P.C., for quashing Annexure-A5 charge framed against the petitioner.

2. The grievance pointed out by the petitioner is that though the trial court heard the petitioner under Section 227 of Cr.P.C., charge was framed without forming an opinion as to the ground for presuming that he has committed the offences alleged, or a finding to the effect that no sufficient grounds were there for a discharge.

3. The petitioner is relying on Annexure-A3 proceeding sheet in S.C.No.390 of 2022 to say that the case was posted for hearing under Section 227 of Cr.P.C. on several occasions. On 17.04.2023, the case was posted for hearing under Section 227 of Cr.P.C., on which day, the defence prayed for hearing and it was posted as last chance to



24.04.2023. On 24.04.2023, Section 227 hearing was over, and the case was posted for recording plea to 18.05.2023. On 18.05.2023, the Judge was on leave and the case was adjourned by notification to 09.06.2023. On 09.06.2023, charge was framed against accused Nos.1 and 2 and they pleaded not guilty, and then the case was adjourned for evidence to 05.07.2023. Though the petitioner was heard under Section 227 of Cr.P.C., the learned Judge has not stated that there was no sufficient ground for a discharge, and when it proceeded for framing charge, the learned Judge failed to form an opinion as to whether there is ground for presuming that the accused has committed the offence alleged so as to frame the charge.

4. Learned counsel for the petitioner relied on the decision **State of Karnataka v. L.Muniswamy and Others [Manu/SC/0143/1977]** to say that the order framing a charge affects a person's liberty substantially and therefore it is the duty of the court to consider judicially whether the material warrants the framing of the charge. In **Thampi v. State of Kerala [2016 (1) KLT 34]**, this Court held that a



mere reference to the materials on record will not cause any prejudice to the accused to say that the mandate under Sections 227 or 239 will not stand in the way of passing a speaking order with a reference to materials or documents from which the trial judge formed an 'opinion' that there are grounds for presuming that there is a *prima facie* case, which is triable before that Court. In that case, an application was filed by the accused for a discharge under Section 227 of Cr.P.C.

5. Sections 227 and 228 of Cr.P.C. read as follows:

227. Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge.—(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, [or any other Judicial Magistrate of the first



class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

6. Going by Sections 227 and 228 of Cr.P.C., the Judge has to consider the records and documents submitted, and on hearing the submissions of the accused and prosecution, if the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so. So for discharging an accused under Section 227 of Cr.P.C., the Judge should record specific reasons for discharge. Even after such consideration and hearing the submissions, the Judge is of the opinion that there is ground for presuming that the accused has committed the offence, he shall frame



the charge against the accused. So it is imperative under Section 228 of Cr.P.C., that before the Judge proceeds to frame the charge, he has to form an opinion, that there is ground for presuming that, the accused has committed the offence. On going through Annexure-A3 proceeding sheet, it could be seen that the learned Judge did not form an opinion that there is ground for presuming that the petitioner has committed the offence. So, Annexure-A5 charge framed by the trial Judge is vitiated, as it violates the mandate under Section 228 of Cr.P.C.

7. In the result, Annexure-A5 charge framed by the trial court is quashed, and the learned trial Judge is directed to hear the prosecution and the petitioner once again under Section 227 of Cr.P.C. consider the record of the case and documents submitted, and thereafter form an opinion as to whether there is ground for a discharge and if not whether there is ground for presuming that the accused has committed the offences alleged. If the learned Judge forms an opinion that there is ground for presuming that the accused has committed the offences alleged then a fresh



charge has to be framed against him.

With these directions, this Crl.M.C. is disposed of.

Sd/-

SOPHY THOMAS
JUDGE

DSV/-



APPENDIX OF CRL.MC 818/2024

PETITIONER'S ANNEXURES :

Annexure A1 CERTIFIED COPY OF THE FIR IN CRIME NO.178 OF 2022 OF VANITHA POLICE STATION, PATHANAMTHITTA.

Annexure A2 CERTIFIED COPY OF RELEVANT PAGES OF THE FINAL REPORT IN CRIME NUMBER OF 178/2022 OF VANITHA POLICE STATION, PATHANAMTHITTA.

Annexure A3 CERTIFIED COPY OF PROCEEDINGS IN SC NO.390/2022 BEFORE THE DISTRICT AND SESSIONS COURT, PATHANAMTHITTA.

Annexure A4 CERTIFIED COPY OF PROCEEDINGS IN SC NO.390/2022 BEFORE THE FAST TRACK SPECIAL COURT, PATHANAMTHITTA.

Annexure A5 CERTIFIED COPY OF THE CHARGE IN SC NO.390/2022 BY ADDITIONAL SESSIONS JUDGE-I, PATHANAMTHITTA.

RESPONDENT'S ANNEXURES : NIL