



2024:KER:69035

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 10<sup>TH</sup> DAY OF SEPTEMBER 2024 / 19TH BHADRA, 1946

CRL.REV.PET NO. 786 OF 2024

CRIME NO.91/2023 OF MARAYUR POLICE STATION, IDUKKI

AGAINST THE ORDER DATED 03.05.2024 IN M.C. NO.46 OF 2023 OF SUB

DIVISIONAL MAGISTRATE, DEVIKULAM

REVISION PETITIONER/COUNTER PETITIONER:

T.G. ANOOP  
AGED 43 YEARS  
S/O. GOPI, THEVAROLLIL HOUSE, PIUS NAGAR, CHOORAKKULAM,  
KEEZHANTHOOR VILLAGE, DEVIKUAM, IDUKKI, PIN - 685620

BY ADVS.  
JOICE GEORGE  
LIJI.J.VADAKEDOM

RESPONDENTS/STATE AND COMPLAINANT:

- 1 STATE OF KERALA  
REPRESENTED BY ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM, PIN - 682031
- 2 THE STATION HOUSE OFFICE, MARAYOOR  
MARAYOOR POLICE STATION, MARAYOOR, IDUKKI, PIN - 685620

SR PP - RENJIT GEORGE

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON  
10.09.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**“C.R”****ORDER****Dated this the 10<sup>th</sup> day of September, 2024**

This Criminal Revision Petition has been filed under Section 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [hereinafter referred as 'BNSS' for short], to set aside order dated 03.05.2024 in M.C. No.46/2023 on the files of the Sub Divisional Magistrate, Devikulam or to remand the case for de novo trial and disposal. The petitioner herein is the counter petitioner in M.C. No.46/2023.

2. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor, in detail. Perused the impugned order and relevant materials available.

3. At the time of hearing, the learned counsel for the petitioner, vehemently canvassed that, before passing the order under Section 117 of Cr.P.C, the Court shall conduct an inquiry as provided under Section 116 of Cr.P.C. as to the truth of the information. In the instant case, the said



procedure not properly followed by the learned Magistrate. Therefore, the order is illegal for procedural violation. He also would submit that, even though CW4 was examined as PW1 before passing the impugned order, the same lacks sufficient reasons to justify the order. Therefore, on merits also the impugned order will not stand in the eye of law, is the submission of the learned counsel for the petitioner.

4. The learned Public Prosecutor also conceded that there is procedural violation at the instance of the learned Magistrate, as could be gathered from the proceedings of the Court. Therefore, the matter may be remanded back to the Sub Divisional Magistrate, for fresh consideration, strictly following the procedure and to pass order on merits.

5. Coming to the essentials to be considered by a Magistrate before passing an order to give security by a person, the Magistrate should follow the procedures under Section 116 of Cr.P.C. In this connection, reference to Sections 116 and 117 of Cr.P.C. is necessary. The same are



as under:

**116. Inquiry as to truth of information.**—(1) *When an order under section 111 has been read or explained under section 112 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 113, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.*

*(2) Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons-cases.*

*(3) After the commencement, and before the completion, of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the*



*person in respect of whom the order under section 111 has been made to execute a bond, with or without sureties, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded:*

*Provided that—*

*(a) no person against whom proceedings are not being taken under section 108, section 109, or section 110 shall be directed to execute a bond for maintaining good behaviour;*

*(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 111.*

*(4) For the purposes of this section the fact that a person is an habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved*



*by evidence of general repute or otherwise.*

*(5) Where two or more persons have been associated together in the matter under inquiry, they may be dealt within the same or separate inquiries as the Magistrate shall think just.*

*(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs:*

*Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.*

*(7) Where any direction is made under sub-section (6) permitting the continuance of proceedings the Sessions Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any*



*special reason or was perverse.*

**117. Order to give security.**—*If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:*

*Provided that—*

*(a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 111;*

*(b) the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;*

*(c) when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.*

6. Sections 135 and 136 of the BNSS are the provisions analogous to Sections 116 and 117 of Cr.P.C. The same also are as under:



**135. Inquiry as to truth of information.-** (1) *When an order under section 130 has been read or explained under section 131 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant, issued under section 132, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary.*

(2) *Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trial and recording evidence in summons-cases.*

(3) *After the commencement, and before the completion, of the inquiry under subsection (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 130 has been made*





*to execute a bond or bail bond, for keeping the peace or maintaining good behaviour until the conclusion of the inquiry, and may detain him in custody until such bond or bail bond is executed or, in default of execution, until the inquiry is concluded:*

*Provided that—*

*(a) no person against whom proceedings are not being taken under section 127, section 128, or section 129 shall be directed to execute a bond or bail bond for maintaining good behaviour;*

*(b) the conditions of such bond, whether as to the amount thereof or as to the provision of sureties or the number thereof or the pecuniary extent of their liability, shall not be more onerous than those specified in the order under section 130.*

*(4) For the purposes of this section the fact that a person is a habitual offender or is so desperate and dangerous as to render his being at large without security hazardous to the community may be proved by evidence of general repute or otherwise.*

*(5) Where two or more persons have been associated together in the matter under*



*inquiry, they may be dealt with in the same or separate inquiries as the Magistrate shall think just.*

*(6) The inquiry under this section shall be completed within a period of six months from the date of its commencement, and if such inquiry is not so completed, the proceedings under this Chapter shall, on the expiry of the said period, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs:*

*Provided that where any person has been kept in detention pending such inquiry, the proceeding against that person, unless terminated earlier, shall stand terminated on the expiry of a period of six months of such detention.*

*(7) Where any direction is made under sub-section (6) permitting the continuance of proceedings, the Sessions Judge may, on an application made to him by the aggrieved party, vacate such direction if he is satisfied that it was not based on any special reason or was perverse.*

**136. Order to give security.-** *If, upon such inquiry, it is proved that it is necessary*



*for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond or bail bond, the Magistrate shall make an order accordingly:*

*Provided that—*

*(a) no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 130;*

*(b) the amount of every bond or bail bond shall be fixed with due regard to the circumstances of the case and shall not be excessive;*

*(c) when the person in respect of whom the inquiry is made is a child, the bond shall be executed only by his sureties.*

7. Going by the mandate of Section 116 (2) of Cr.P.C, an inquiry contemplated under Section 116 of Cr.P.C. shall be made, as nearly as may be practicable, in the manner prescribed for conducting trial and recording evidence in summons cases.



8. Chapter XX of the Cr.P.C, starting from Section 251 to 259, deal with trial of summons cases by Magistrates. Sections 274 to 282 are the provisions analogous to Sections 251 to 259 in the BNSS.

9. As per Section 254 of Cr.P.C., it has been provided that, *(1) If the Magistrate does not convict the accused under section 252 or section 253, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence. (2) The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing. (3) The Magistrate may, before summoning any witness on such application, require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in Court.*

10. As per Section 277 of BNSS, it has been



provided that, (1) *If the Magistrate does not convict the accused under section 275 or section 276, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence. (2) The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing. (3) The Magistrate may, before summoning any witness on such application, require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in Court.*

11. Going by Section 254 of Cr.P.C. as well as Section 277 of BNSS, on completion of the prosecution evidence, the Magistrate has to hear the accused and take all such evidence as he produces in his defense.

12. On perusal of the proceedings before the Magistrate, after examining PW1, the case was posted to



313 examination. The order dated 22.04.2024 is to the effect that “CP present. For 313 statement. Adjourned to 02.05.2024”. The order dated 02.05.2024 is that “CP present, 313 statement recorded. Posted for judgment”. Thereafter, the order was pronounced. Thus, the opportunity of the petitioner to adduce evidence as part of his defense or an opportunity to hear him, not provided as per the proceedings of the learned Sub Divisional Magistrate. Thus, the impugned order has been passed without following the procedure as nearly as may be practicable, provided under the law, even though, Section 116(2) provides that, an inquiry contemplated under Section 116 of Cr.P.C. shall be made, as nearly as may be practicable, in the manner prescribed for conducting trial and recording evidence in summons cases. In this context, the text ‘as nearly as may be practicable’ has to be understood to ensure that the essentials of summons trial should be followed.

13. Therefore, the impugned order has been passed, without following the procedures even as nearly as



practicable and the same is liable to be set aside, for the said reason. Even though, the learned counsel for the petitioner argued that no reasons stated otherwise in the order to justify the order, I am inclined to address the same and relegate the same to be considered by the learned Sub Divisional Magistrate, afresh.

14. In view of the matter, the order impugned stands set aside and the matter is remanded back to the Sub Divisional Magistrate Court, Devikulam for fresh consideration of the matter, by following the procedures described herein above and for passing reasonable order, which would speak for itself, so as to digest the reasons for the order to the higher Authorities and Superior Courts, while considering its legality. The learned Sub Divisional Magistrate is directed to do the said exercise, within a period of three months from the date of receipt of a copy of this order.

15. Accordingly, this revision petition stands allowed as indicated above.

16. The revision petitioner is directed to appear



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before the learned Magistrate at 10.00 am on 30.09.2024.  
without fail and for which no further notice is necessary.

Registry is directed to forward a copy of this  
order to the trial court, within three days, for information  
and further steps.

**Sd/-**  
**A. BADHARUDEEN**  
**JUDGE**

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**APPENDIX OF CRL.REV.PET 786/2024**

**PETITIONER ANNEXURES :**

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| <b>Annexure -I</b>   | <b>COPY OF THE REPORT DATED NIL SUBMITTED BY THE 2ND RESPONDENT UNDER SECTION 107 CR.P.C.</b>                                  |
| <b>Annexure -II</b>  | <b>COPY OF THE FIR IN CRIME NO.91/23 DATED 19.2.2023 OF MARAYOOR POLICE STATION.</b>   |
| <b>Annexure -III</b> | <b>COPY OF THE RELEVANT EXTRACT OF THE FINAL REPORT IN CRIME NO.637/2020 OF MARAYOOR POLICE STATION DATED 10/4/2021</b>        |
| <b>Annexure - IV</b> | <b>COPY OF THE FIR IN CRIME NO.437/2016 DATED 3.10.2016 OF MARAYOOR POLICE STATION</b>   |
| <b>Annexure - V</b>  | <b>COPY OF THE PRELIMINARY ORDER DATED 12.10.2023 IN MC NO. 46/2023 BEFORE THE SUB DIVISIONAL MAGISTRATE COURT, DEVIKULAM.</b> |