



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

MONDAY, THE 4TH DAY OF SEPTEMBER 2023 / 13TH BHADRA, 1945

CRL.REV.PET NO. 678 OF 2023

AGAINST THE ORDER IN CRL.M.P.66/2023 IN SC 704/2022 OF THE ASSISTANT
SESSIONS JUDGE, CHAVAKKAD

REVISION PETITIONER/PETITIONER/3RD ACCUSED

VISHNU K.B
AGED 27 YEARS
S/O. BALAKRISHNAN, RESIDING AT KANDANKULANGARA VEEDU,
PAZHUNNANA DESOM, CHEMMAMTHITTA VILLAGE, KUNNAMKULAM,
THRISSUR, PIN - 680503
BY ADVS.
V.V.SURENDRAN
P.A.HARISH

RESPONDENTS/STATE/RESPONDENT/COMPLAINANT

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, PIN - 682031
- 2 THE STATION HOUSE OFFICER
KUNNAMKULAM POLICE STATION, KUNNAMKULAM,
PIN - 680503
- ADDL R3 SHARATH
S/O. PREMAN, RESIDING AT THANDASHERIL HOUSE,
PAZHUNNANA DESOM, CHEMMAMTHITTA VILLAGE, KUNNAMKULAM,
THRISSUR - 680501

IS IMPEADED AS ADDITIONAL RESPONDENT 3 AS PER ORDER
DATED 5/7/2023 IN CRL.M.A. 3/2023 IN CRL.R.P. 678/2023



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ADDL R4 ARJUN

**S/O. KRISHNAN, RESIDING AT KOTTARAPATTIL HOUSE,
PAZHUNNANA DESOM, CHEMMAMTHITTA VILLAGE,
KUNNAMKULAM, THRISSUR -680501**

**IS IMPLEADED AS PER ORDER DATED 5/7/2023 IN
CRL.M.A. 3/2023 IN CRL.R.P. 678/2023**

**BY ADV RESMI NANDANAN-R3 & R4
ADV M.P.PRASANTH-PUBLIC PROSECUTOR**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 04.09.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**



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C.R

ORDERDated this the 4th day of September, 2023

The revision petitioner is the 3rd accused in Crl.M.P. No.66/2023 in S.C.704/2022 on the file of the Assistant Sessions Judge, Chavakkad, Thrissur.

2. The petitioner would submit that the offences alleged in the case are punishable under Sections 143, 147, 148, 341, 323, 324, 326, 308 and 149 of the Indian Penal Code. According to the petitioner, he is not involved in the case and has not committed any offence. The de facto complainants are aware of the same and they had intimated this fact to the police authorities. However, the investigating authorities did not take that into consideration and arbitrarily retained the petitioner in the array of the accused.

3. The de facto complainants have no objection in discharging the petitioner or removing the petitioner from the



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array of the accused. They have filed a sworn affidavit before a Notary Public to the above effect. The de facto complainants have no objection in exonerating the petitioner from the case, while the matter is pending as C.P.No.60/2020 before the Judicial First Class Magistrate's Court, Kunnankulam.

4. The petitioner submits that the petitioner filed Crl.M.C. No.179/2021 before this Court, wherein affidavits of the de facto complainants were also produced. This Court by order dated 01.03.2021 dismissed the same with liberty to seek discharge before the Trial Court.

5. Thereafter, the petitioner filed Crl.M.P. No.66/2023 before the Court of the Sessions seeking discharge. The Sessions Court has dismissed the application by order dated 11.04.2023. The petitioner is aggrieved by the said order.

6. The petitioner submits that it was on a mistaken identity that the petitioner's name was mentioned by the complainants. But, later realising the fault, the defacto



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complainants themselves have given intimation to the Investigating Officer/ Police. However, in the Final Report the petitioner was included as the 3rd accused. The affidavits of the de facto complainants/injured clearly revealed that the revision petitioner is not involved in the case. The de facto complainants have no objection in discharging the petitioner from the case.

7. Public Prosecutor entered appearance and resisted the revision petition. It is pointed out that the petitioner had earlier approached this Court invoking Section 482 of the Code of Criminal Procedure filing CrI.M.C. No.179/2021. This Court did not grant the relief prayed for by the petitioner. This Court only directed the petitioner to file application for discharge. This Court, while considering this revision, should be confined to the legality of the order passed by the court below in the application for discharge submitted by the petitioner.



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8. I have heard the learned counsel for the petitioner, the learned Public Prosecutor representing respondents 1 and 2 and the learned counsel appearing for respondents 3 and 4.

9. The petitioner stands chargesheeted in S.C.No. 704/2022 for offences punishable under Sections 143, 147, 148, 341, 324, 326, 308 and 149 of the Indian Penal Code. The case of the petitioner is that he was arrayed as an accused by an error committed by the de facto complainants and the de facto complainants have filed notarised affidavits before the court below. The de facto complainants have appeared before this Court and have also stated that the petitioner is not involved in the crime.

10. I find that with a prayer to quash the Charge Sheet, the petitioner had filed Crl.M.C. No.179/2021 and this Court did not grant the relief. This Court, however, directed the petitioner to seek discharge from the court below. Consequently, the petitioner has approached the court below and the court below



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has passed order dated 11.04.2023 in CrI.M.P No.66/2023.

11. In the said order, the Assistant Sessions Judge found that while considering the discharge application, the Court will have to look into whether there are sufficient materials to presume that the accused has committed the offence as alleged. It cannot look into the documents produced by the accused or any other circumstances, which are projected by the accused.

12. The Hon'ble Apex Court has considered the issue in the judgment in **Ghulam Hassan Beigh v. Mohammad Maqbool Magrey and others** [(2022) 12 SCC 657]. In the said judgment, the Hon'ble Apex Court relied on the judgment in **Asim Shariff v. NIA** [(2019) 7 SCC 148], in which the Apex Court has held that while examining the discharge application filed under Section 227 Cr.P.C., it is expected from the Trial Judge to exercise his judicial mind to determine as to whether a case for trial has been made out or not. The Court is not



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supposed to hold a mini trial by marshelling the evidence on record.

13. In the judgment in **State of Karnataka v. M.R.Hiremath** [(2019) 7 SCC 515], the Apex Court held that at the stage of considering an application for discharge, the Court must proceed on the assumption that the materials which have been brought on record by the prosecution are true and evaluate the materials in order to determine whether the facts emerging from the materials, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence.

14. In **State of Tamil Nadu v. Suresh Rajan** [(2014) 11 SCC 709], the Hon'ble Apex Court held that at the stage of discharge, only probative value of the materials has to be gone into and the Court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. The law does not permit a mini trial at this stage.



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15. For the purpose of determining whether there is sufficient ground for proceeding against the accused, the Court possesses a comparatively wider discretion in the exercise of which it can determine the question whether the material on the record, if unrebutted, is such on the basis of which a conviction is reasonably possible. Only *prima facie* case is to be seen. Whether case is beyond reasonable doubt is not to be seen at the stage of discharge. Probative value of materials on record cannot be gone into.

16. The purpose of Section 227 of the Code is to ensure that the Court should be satisfied that the accusations made against the accused is not frivolous and that there is some material for proceeding against the accused. If there is sufficient ground for presuming that the accused has committed an offence, an order of discharge cannot be passed and the accused has to face trial. In this case, on the basis of materials made available by the prosecution, the Assistant Sessions

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Judge has found that there is reason to proceed against the accused. A notarised affidavit subsequently signed by the de facto complainants cannot be taken in isolation by the Court so as to discharge the accused.

In view of the afore facts, I find no merit in the criminal revision petition. The criminal revision petition is therefore dismissed. Taking into consideration the fact that the petitioner is aspiring for a job in a public sector and pendency of the proceedings is likely to cause prejudice to the petitioner, there will be a direction to the court below to dispose of the matter as expeditiously as possible.

Sd/-

**N.NAGARESH
JUDGE**

hnh



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APPENDIX OF CRL.REV.PET 678/2023

PETITIONER ANNEXURES

Annexure A1	TRUE COPY OF AFFIDAVIT DATED 26.12.2020
Annexure A2	TRUE COPY OF AFFIDAVIT DATED 26.12.2020