

**Prasad vs State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1341374](https://sooperkanoon.com/1341374)

**Court :** Kerala

**Decided On :** Jun-01-2023

**Judge :** Honourable Mr. Justice Raja Vijayaraghavan V

**Appeal No. :** Crl.MC/1611/2020

**Appellant :** Prasad

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V THURSDAY, THE 1ST DAY OF JUNE 2023 / 11TH JYAISHTA, 1945 CRL.MC NO. 1611 OF 2020 IN SC 825/2014 OF ADDITIONAL SESSIONS JUDGE, PALAKKAD PETITIONER/4TH ACCUSED: PRASAD AGED 31 YEARS S/O. ARUMUGHAN, KONGLAM, KANNAMBRA P.O, PALAKKAD 678 686. BY ADVS. K.ANAND SRI.BENNY ANTONY PAREL SRI.T.M.MUHAMED HAFEES SHRI.ANOOP SEBASTIAN RESPONDENTS/STATE & COMPLAINANT:

1 STATE OF KERALA REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM 682 031. 2 SUB INSPECTOR OF POLICE, VADAKKENCHERRY POLICE STATION, MAIN ROAD, MANDHAM,

VADAKKENCHERRY, PALAKKAD 678 683. SRI.VIPIN NARAYAN, SR PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 01.06.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.M.C. No.1611 of 2020 2

## **ORDER**

The petitioner herein is the 4th accused in S.C.No.825/2014 on the files of the Assistant Sessions Judge (Addl), Palakkad. In the aforesaid case, the petitioner, along with the rest of the accused, are facing indictment for having committed offences punishable under Sections 143, 147, 148, 294(b), 506(ii), 324, 326, 307 r/w 149 of the IPC.

2. The prosecution allegation is that on 08.09.2013 at about 8: 30

pm, the petitioner herein, along with the rest of the accused, wrongfully restrained the informant and thereafter attacked them, causing injuries. It is also alleged that the injuries were inflicted on CW2 as well.

3. The petitioner asserts that in the course of proceedings before

the Trial Court, an application under Section 307 of the Cr.P.C. was filed. However, the learned Assistant Sessions Judge rejected the application by passing Annexure-A3 order. Being aggrieved by Annexure-A3, a revision petition was filed. However, the same was also rejected.

4. Immediately thereafter, an application was filed under Section 311 of the Cr. P.C. seeking to recall PWs 1, 2, 3, 15, and 16. A copy of the application has not been placed before this Court. The learned Assistant CrI.M.C. No.1611 of 2020 3

**Sessions Judge by Annexure A5 order rejected the request. The said order**

is under challenge in this petition.

5. I have heard Sri. K. Anand, the learned counsel appearing for

the petitioner, who submits that there is no justification on the part of the Assistant Sessions Judge in taking the view that the application under Section 307 of the Cr.P.C has been filed to escape from the prosecution. The learned counsel submits that the counsel appearing for the petitioner was not able to properly cross-examine PWs 1, 2, 3, 15, and 16, as he was under the bona fide belief that the application under Section 307 of the Code will be allowed.

6. The learned Public Prosecutor has vehemently opposed the

submissions. It is submitted that the assertions made by the petitioner cannot be sustained. He would point out that the petitioner was represented by the counsel all through and that the record of the deposition of the witnesses would show that all these witnesses were cross-examined by the counsel appearing for the 4th accused in much detail.

7. I have considered the submissions advanced.

8. Section 311 of the Code of Criminal Procedure, 1973 (for short the Code) confers powers on the court to summon material witnesses or examine persons present. The provision reads thus: CrI.M.C. No.1611 of 2020 4

311. Power to summon material witness, or examine person present.- Any court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

9. It is by now settled that the first part of Section 311 is

permissive and gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to

recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case. It is also well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons, and it should be exercised with great caution and circumspection. The court has wide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same

Crl.M.C. No.1611 of 2020 5 has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law. (See *Swapan Kumar Chatterjee v. CBI*, (2019) 14 SCC 328).

10. In the case on hand, the only contention is that the counsel

appearing for the accused was not in a position to cross-examine the witnesses on account of the fact that his challenge with respect to the rejection of the application filed under Section 307 was pending before the superior court. However, the petitioner has not placed on record the copy of the application or the deposition of the witnesses concerned. The learned Sessions Judge, in the order itself, has mentioned that the witnesses have been cross-examined in detail by the counsel appearing for the accused. While rejecting the application submitted by the petitioner under Section 307, the learned Sessions Judge had specifically noted that there was no justification for exercising discretion in favour of the petitioner and that the petition was filed with oblique motive.

Having considered the entire facts, I am of the considered opinion that the learned Sessions Judge had considered all the relevant facts while passing the impugned order. In that view of the matter, I do not think that

Crl.M.C. No.1611 of 2020 6 any interference is warranted. This petition will stand dismissed. Sd/- RAJA VIJAYARAGHAVAN V JUDGE Sru Crl.M.C. No.1611 of 2020 7 APPENDIX OF CRL.MC 1611/2020 PETITIONER ANNEXURES ANNEXURE A1 TRUE COPY OF THE AFFIDAVIT. ANNEXURE A2 TRUE COPY OF THE PETITION FILED UNDER SECTION 307. ANNEXURE A3 TRUE COPY OF THE ORDER IN CRL MP NO. 40/2019 IN SC 825/2013 OF THE COURT OF THE ASSISTANT SESSION JUDGE (ADDL) PALAKKAD. ANNEXURE A5 ORIGINAL ORDER IN CRL MP NO. 303/2019 IN SC (ADDL) PALAKKAD.

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