

Jayamohan, vs State of Kerala,

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Court : Kerala Orders

Decided On : Apr-05-2022

Judge : Honourable Mr. Justice K.Haripal

Appeal No. : Crl.Rev.Pet/519/2021

Appellant : Jayamohan,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE K.HARIPAL TUESDAY, THE 5TH DAY OF APRIL 2022 / 15TH CHAITHRA, 1944 CRL.REV.PET NO. 519 OF 2021

ORDER DATED 20.09.2021 IN CRL.M.P. NO. 81/2021 IN S.C. NO.

THIRUVANANTHAPURAM REVISION PETITIONER/PETITIONER/18TH
ACCUSED: JAYAMOHAN, AGED 61 YEARS S/O.SREEDHARAN, THOTTATHIL
VEEDU, NEDIYARA P.O., ANCHAL, KOLLAM DISTRICT, PIN-691 306. BY
ADVS.P.VIJAYA BHANU (SR.) K.SIJU S.ABHILASH ANJANA KANNATH
RESPONDENTS/STATE & COUNTER PETITIONER/STATE AND
COMPLAINANT

1 STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031. 2 CENTRAL BUREAU OF INVESTIGATION, SCB, THIRUVANANTHAPURAM, PIN - 695 010, REPRESENTED BY THE CENTRAL GOVERNMENT STANDING COUNSEL. R1 BY SMT. SREEJA V., SENIOR PUBLIC PROSECUTOR R2 BY SRI. SUVIN R. MENON, CENTRAL GOVERNMENT COUNSEL R2 BY ADVS.P.VIJAYAKUMAR S.MANU, ASGI

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 12.01.2022, ALONG WITH CrI.MC.4545/2021, THE COURT ON 05.04.2022 DELIVERED THE FOLLOWING: CrI.M.C.No.4545 OF 2021 2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE K.HARIPAL TUESDAY, THE 5TH DAY OF APRIL 2022 / 15TH CHAITHRA, 1944 CRL.MC NO. 4545 OF 2021 S.C. NO. 770/2019 ON THE FILE OF SPECIAL JUDGE (SPE/CBI), THIRUVANANTHAPURAM PETITIONER/18TH ACCUSED: JAYAMOHAN, AGED 61 YEARS S/O. SREEDHARAN, THOTTATHIL VEEDU, NEDIYARA P.O., ANCHAL, KOLLAM DISTRICT-691306. BY ADVS.P.VIJAYA BHANU (SR.) K.SIJU S.ABHILASH ANJANA KANNATH RESPONDENTS/STATE/COMPLAINANT:

1 STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682031. 2 CENTRAL BUREAU OF INVESTIGATION, SCB, THIRUVANANTHAPURAM-695010, REPRESENTED BY THE PUBLIC PROSECUTOR/ CENTRAL GOVERNMENT STANDING COUNSEL. R1 BY SMT. SREEJA V., SENIOR PUBLIC PROSECUTOR R2 BY SRI. SUVIN R. MENON, CENTRAL GOVERNMENT COUNSEL BY ADV S.MANU, ASGI THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION

ON 12.01.2022, ALONG WITH Crl.Rev.Pet.519/2021, THE COURT ON 05.04.2022 PASSED THE FOLLOWING: Crl.M.C.No.4545 OF 2021 3

ORDER

Since the petitioner in both the revision petition and the M.C is one and the same and relating to the very same proceedings, both the matters were heard together and are being disposed of by this common order.

2. Crl.R.P.No.519/2021 is a revision filed under Section

397 read with 401 of the Code of Criminal Procedure seeking to quash the common order dated 20.09.2021 of the learned Special Judge(SPE/CBI), Thiruvananthapuram in Crl.M.P.Nos.81/2021 and 82/2021 in S.C.No.770/2019. Crl.M.P.No.81/2021 was filed by the petitioner, who is the 18th accused in the Sessions Case seeking to discharge him under Section 227 of the Cr.P.C. The other Crl.M.P. was filed by the 19th accused and both the matters were heard together and by the impugned order, the learned Special Judge dismissed the application and aggrieved by the same, the petitioner has moved this revision. Immediately after dismissing the revision, the court framed charge, read over and explained the same and Crl.M.C.No.4545/2021 is intended to

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3. The bare minimum facts for the disposal of these

matters can be stated first. The Sessions Case arose from the final report charged by the CBI, the 2nd respondent in a murder case originated in Yeroor police station limits in Kollam. The alleged incident had happened on 10.04.2010 at a place by name Nettayam-Konoth junction within Yeroor police station limits. Deceased Ramabhadran was an activist of the CPI(M). Later he shifted his allegiance to the Congress party and was a prominent

leader of the area. The accused persons are activists of the

CPI(M). Irked by the fact that the said Ramabhadran was organising the Congress party workers, they were inimically disposed against Ramabhadran. While so, on 04.04.2021, the first accused Gireesh was attacked by some Congress workers and was injured and was taken to Gokulam Medical College at Venjaramoodu, for which Crime No.291/2010 was registered in Yeroor police station. There is a counter case also which is Crime No.292/2010; in that case one Vikraman, Sunil and Binu had

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sustained injuries who were said to be the assailants of Gireesh who were also admitted in hospital. It is stated that the said Ramabhadran had taken lead role in extending medical assistance to the accused in Crime No.291/2010 where the said Gireesh had sustained injuries and also had taken lead role in getting bail to

the accused persons. Gireesh was a strong supporter of the CPI(M) and was a trainer for giving training in martial arts to the activists of the CPI(M); he had a feeling that the party was not taking the assault against him serious. But the accused persons who are the leaders and activists of the CPI(M) made assurance to him that the attack against him is taken as an attack against the CPI(M) and thus they hatched a conspiracy and ultimately, while the said Ramabhadran was taking supper inside his rented house, accused persons broke opened the house in the dead of night, hacked him and caused him serious injuries. He was immediately taken to the local hospital first and then to the Gokulam Medical College at Venjaramoodu. At the early hours on 11.04.2010, he died. At first, a crime was registered in the incident in Yeroor

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Arms Act. After the death of Ramabhadran, offence under Section 302 of the IPC was also incorporated. Subsequently, at the instance of some near relatives of the deceased, investigation was handed over to the Crime Branch and the Crime Branch laid a charge sheet against the accused persons. While so, Bindu the widow of Ramabhadran approached this Court and filed W.P(C).No.7433/2014

and by judgment dated 15.10.2015, this Court directed the CBI to take over investigation and to conduct de-novo investigation and proceed against the culprits. Thus, the CBI, the 2nd respondent conducted de-novo investigation and laid

the charge sheet before the Chief Judicial Magistrate, Thiruvananthapuram who took the case on file as C.P. No. 1/2019 and thereafter, the case was committed to the Special Court and thus the case was taken on file as S.C. No. 770/2019. At that stage, the wife of the deceased approached this Court and this Court was directed to expedite the trial and discharge application

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4. There are twenty accused in the charge sheet. Out of

them the 20th accused, Raveendran Pillai @ Pothuravi had died on 13.03.2005. Thus, an abated charge is laid against him and now there are only nineteen accused persons. The allegation against the accused persons can be summarised as follow:- That on 10.04.2010 accused persons 5, 11, 14, and 15 and one Sreekumar who has turned approver in pursuance of criminal conspiracy hatched with accused Nos. 1 to 4, A12, A13, A20 and Rajeev, who also turned approver, formed themselves into an unlawful assembly at 10.00 P.M. at Rationkadamukku, Yeroor Village in Kollam district with the common object of committing murder of Ramabhadran, accused Nos. 5 to 8, 11, 14 and 15 trespassed into the house of Ramabhadran with deadly weapons and hacked him and

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inflicted very fatal injuries with the intention of causing his death; he was immediately rushed to the hospital. Later, he was taken to the Gokulam

Medical College Hospital at Venjaramoodu where, at 3.15 A.M. on 11.04.2010, he died due to the seriousness of the injuries sustained. Thus, the charge sheet has been laid against accused persons alleging offence under Sections 109, 114, 120B, 143, 147, 148, 201, 212, 302, 447, 448, 449, 452, 506(ii) read with 149 of the IPC and Section 212 of the IPC and Section 27 of the Indian Arms Act. The specific allegation against the petitioner, the 18th accused is that after the alleged incident, he along with accused Nos. 16, 17, and 19 harboured accused Nos. 2, 3, 5 to 9 and the above said Rajeev and Sreekumar, approvers and thus he committed offence under Section 212 of the IPC. To be more specific the allegation in charge No. 108 against the petitioner can be read as follows:- CHARGE NO.108: That Shibu (A-5), Vimal (A-6), Sudeesh (A-7), Shan (A-8), Ratheesh (A-9), Biju (A-10), Renjith(A-11), Riyas (A-14), Markson

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(A-15), and Sreekumar (approver) in pursuance of the conspiracy with Gireesh (A-1), Padman (A-2), Afsal (A-3), Najumal (A-4), Sali @ Kochunni (A-12), Riyas @ Muneer (A-13), Raveendran Pillai @ Pothuravi (A-20) and Rajeev (approver) on 10.04.2010 at around 21.00 hrs unlawfully assembled at Rationkadamukku, Nettayam, Yeroor, Kollam as mentioned in Charge No.1 and in prosecution of the common object of committing murder of Shri Ramabhadran A-5, A-6, A-7, A-8, A-11, A-14 & A-15 trespassed into the house of Ramabhadran with deadly weapons and brutally hacked Ramabhadran and inflicted 26 brutal injuries which they knew that it was likely to cause death and was sufficient in the ordinary course of nature to cause death, as narrated in Charge No. 1 and Ramabhadran succumbed to his injuries at about 03:15 AM on 11.04.2010 at Gokulam Medical College and that Suman (A-16), Babu Panicker (A- 17), Jayamohan (A-18) and Roykutty (A-19) on or about 11.04.2010 harboured the accused person A-2, A-3, A-5, A-6, A-7, A-8, A-9, Rajeev (approver) and Sreekumar (approver) knowing

at the time of harbouring that the said A-2, A-3, A-5, A-6, A-7, A-8, A-9, Rajeev (approver) and Sreekumar (approver) had committed the offences of criminal conspiracy, murder etc. and that Jayamohan (A-18) committed offence punishable under Section 212 of the IPC.

5. Annexure 4 in the Criminal Revision is the

application for discharge filed by the petitioner where he contended that there are no prima facie materials that could be proved against him by the prosecution. He is a social worker belonging to a well-reputed family in the locality. There are no materials at all to raise such an allegation against him. Even Crl.M.C.No.4545 OF 2021 10

though it is stated that he had helped and assisted accused Nos. 2, 3, 5 to 9 and the approvers and harboured them, there are no convincing materials to support the allegation. Even if it is stated that he had told them that there is nothing to be worried, that the party will take care of everything, that will not attract offence under Section 212 of the IPC and that those are not satisfactory materials to frame charge against him.

6. The Public Prosecutor filed Annexure 5 (in the

Crl.R.P.) objection contending that there are strong materials against him, both the approvers have stated in clear terms that he had played vital role in harbouring the accused persons who had actually committed the crime, that it was he who had taken steps for arranging shelter for them after the commission of the crime and therefore, the application for the discharge has no merit.

7. I heard the learned Senior counsel for the petitioner as well as the learned Central Government Counsel for the 2 nd respondent. Crl.M.C.No.4545 OF 2021 11

8. The learned Senior Counsel for the petitioner

reiterated the statement of facts and the grounds urged in support of the Criminal Revision. Moreover, he has relied on the decisions reported in *Dilawar Babu Kurane v. State of Maharashtra* [AIR 2002 SC 564] and *Aithappa Naik v. State of Kerala* [2017 (2) KLT 1137]. According to the learned counsel, even though the prosecution allegation is that the petitioner along with accused Nos. 17 and 19 had harboured the accused persons, now charge has been framed as though he was part of the conspiracy which led to the actual commission of the crime. According to him, the prosecution has no case that he was part of the conspiracy which led to the death of Ramabhadran and the Court has framed charge ignoring the materials relied on by the prosecution and also allegations raised against him. So CrI. M.C. No. 4545/2021 has been filed for quashing the court charge.

9. I have already extracted the charge against the 18th accused, which is Charge No. 108. The application for CrI.M.C.No.4545 OF 2021 12

discharge stands dismissed. If Annexure 1 order in the Revision Petition is liable to be interfered with and it is found that there are reasons for discharging the accused, the court charge framed which is the subject matter of the CrI.M.C. will become infructuous and therefore, the fate of the CrI.M.C. depends upon the decision of this Court on the legality and correctness of Annexure 1 order passed by the learned Special Judge.

10. It is the settled proposition of law that the standard

of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 of the Cr.P.C. Similarly, at the stage of framing charge under Section 227 of the Cr.P.C., the Sessions Judge is not expected to meticulously judge the truth, veracity and effect of the evidence of the prosecution proposes to adduce. An order of discharge under Section 227 of the Cr.P.C. could be

warranted only in those cases where the court is satisfied that there are no chance of conviction of an accused

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and the trial would be an exercise in futility. Surely, in exercising jurisdiction under Section 227 of the Cr.P.C., the Sessions Judge cannot act merely as a post office or a mouth piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before Court, but should not make roving enquiry into the pros and cons of the case and weigh the evidence, as if he was conducting a trial. In other words, what is expected to consider at the time of framing charge is the prima facies of the case and the broad probabilities. If there are prima facie materials to proceed against the accused, the court is justified in framing charge.

11. I have carefully gone through the charge laid down by the second respondent before the court and also heard the learned Central Government Counsel in detail.

12. The most vital piece of evidence being depended on by the prosecution is the statements of two approvers whose statements were recorded under Section 164 of the Cr.P.C., Crl.M.C.No.4545 OF 2021 14

which had been made available before the Court. It has come out that the petitioner is a prominent leader of the CPI(M), which spearheaded the said attack against Ramabhadran for political reasons. He is an active member of CPI(M) party and a local leader; he was working as the President of the Kollam Grama Panchayat and also a member of the district committee of the party and also the Chairman of the Kerala Karshika Development Corporation. The statements of both the approvers made available by the petitioner himself indicate that the petitioner along with few others had taken lead role, immediately after the execution of the mission by the other accused, to harbour the accused persons. It has come out that when they had reached the district

committee office of the CPI(M) at Kollam, he had noted down their names and addresses and also arranged for their hiding for sometime. He also assured them that they need not be worried about the allegations or the charge or the steps or the prosecution proceedings likely to be initiated by the police and that

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everything will be taken care of by the party. According to the learned counsel for the petitioner, even if the statement is taken on its face value that will not attract offence under Section 212 of the IPC. In fact, at this stage, it is not proper for this Court to make any opinion about this. After evaluating the entire materials and the broad probabilities, the learned Special Judge has found that there are prima facie materials to proceed against the petitioner. After rushing through the materials, I also have no doubt that the petitioner, at least after the execution of the ghastly murder had assisted some of the accused persons to go hiding and thus, there are prima facie materials to infer that he has committed offence under Section 212 of the IPC. Therefore, the learned Special Judge cannot be faulted for dismissing the application filed under Section 227 of the Cr.P.C. After considering the legality, correctness and propriety of the order, I have no hesitation in mind that the Criminal Revision Petition is devoid of merits and is liable to be dismissed.

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13. As a necessary corollary, the validity of the charge

framed against the petitioner has to be considered by this Court. As rightly pointed out by the learned counsel for the petitioner, even the prosecution has no case that the petitioner was part of any larger criminal conspiracy which led to the commission of killing Ramabhadran. The final report filed by the Investigating agency indicates that the actual commission of the crime was done by accused Nos. 5 to 8, 11, 14 and

15. Even though some of the other accused persons were also had accompanied them, the accused persons who had broke open the residential premises of Ramabhadran, committed house trespass and hacked him were accused Nos. 5 to 8, 11, 14 and 15 and one of the approvers by name Rajeev. Even the prosecution has no case that the petitioner was part of the initial criminal conspiracy that hatched for the killing of Ramabhadran. It appears that the prosecution records indicate that the conspiracy had initiated at Gokulam Medical College, while A1 Gireesh was undergoing treatment in that hospital.

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The prosecution records also indicate that earlier A1 to A4, A12, A13 and A20 had entered in criminal conspiracy with A5, A11, A14 and A15 and approver Sreekumar for retaliating the attack against first accused following which weapons were arranged by them and ultimately, accused Nos. 5, 6, 7, 8, 11, 14 and 15 along with A12 and A13 had proceeded to the said house; even then some of them remained in the jeep which was taken near to the house of Ramabhadran and actual commission of the crime was committed by accused Nos. 5 to 8, 11, 14 and 15. In other words, no where it is stated that the petitioner had ever consulted or was part of a criminal conspiracy for committing the crime. May be there are materials to say that immediately after the incident, he was informed and he had arranged for the hiding of the accused persons. But that will not give rise to an inference that he was part of the entire conspiracy.

14. The charge framed by the court goes against the spirit of the allegation against him. The court has framed Crl.M.C.No.4545 OF 2021 18

charge on the following lines:- 1. Accused Nos. 1 to 19 have committed the offence of 120B of 302, 143, 147, 148, 149, 201, 212, 447, 448, 449 452, 457, 506(ii) of the Indian Penal Code and Section 120B of Sec. 27 of the Indian Arms Act, 1959.

2. Accused Nos. 5 to 15 have committed the offence of 302, 143, 147, 148, 149, 201, 447, 448, 449 452, 457, 506(ii) read with 149 of the Indian Penal Code and Sec. 27 of the Indian Arms Act, 1959.

3. Accused Nos. 16 to 19 have committed the offence under

Section 212 of the Indian Penal Code. In other words, the court charge at the penultimate paragraph 1 and 3 cannot go together. In the third place, it stated that Accused Nos. 16 to 19 have committed the offence under Section 212 of the IPC. That is in accordance with the allegations in the final report and also materials produced by the prosecution. But the court charge has been framed and the petitioner has been brought under the common sweep as if he had committed criminal conspiracy in respect of the execution of the plan, which does not stand to reason, logic and also materials relied on by the prosecution.

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15. Even the objection raised by the Public Prosecutor

and also the argument of the learned Central Government Counsel do not suggest that the prosecution has a case that the accused was part of the criminal conspiracy prior to the commission of the crime. In other words, roles have been attributed against him only under Section 212 of the IPC, i.e., post execution of the crime, that he had harboured the real culprits knowing that they are the actual offenders. But the court charge would indicate that he had larger roles, prior to the execution of the crime also. That is incorrect and therefore, the court charge framed against the petitioner will stand quashed and the learned Special Judge is directed to frame the charge afresh on the basis of the observations made above. Thus, the Crl. M.C is allowed to the above extent.

16. In the result, the Criminal Revision Petition is dismissed and the Criminal Miscellaneous Case is disposed of as above. It is to be recollected that by the

judgment of this Court in CrI.M.C.No.4545 OF 2021 20

O.P. (CrI.) No. 270/2021 dated 24.08.2021, the learned Special Judge was directed to frame charge within a period of one month from that day and then to dispose of the case within ten months thereafter, as suggested by the learned Special Judge in his letter dated 10.08.2021. Now having said that the dismissal of the application for discharge is correct and that the charge against the petitioner has to be framed again, the learned Special Judge is directed to complete pre-trial steps within a period of two weeks from the date of receipt of a copy of this

order and then to dispose of the case within ten months

thereafter. Sd/- K.HARIPAL JUDGE JMS/RMV/DCS/27.03.2022 CrI.M.C.No.4545 OF 2021 21 APPENDIX OF CRL.REV.PET 519/2021 PETITIONER ANNEXURES ANNEXURE 1 TRUE COPY OF RELEVANT PAGE OF THE FINAL REPORT IN CRIME NO.RC02(S)/2016/CBI/SCB/ TVPM AS AGAINST THE PETITIONER/18TH ACCUSED. ANNEXURE 2 TRUE COPY OF THE DEPOSITION OF THE APPROVER

RAJEEV RECORDED ON 25.02.2017 UNDER SECTION 306 CR.PC IN SC 770/2019 SPECIAL JUDGE (SPE/CBI), THIRUVANANTHAPURAM ALONG WITH TYPED COPY. ANNEXURE 3 TRUE COPY OF THE DEPOSITION OF THE APPROVER SREEKUMAR RECORDED ON 02.03.2017 UNDER SECTION 306 CR.PC IN SC 770/2019 SPECIAL JUDGE (SPE/CBI), THIRUVANANTHAPURAM ALONG WITH TYPED COPY. ANNEXURE 4 TRUE COPY OF THE PETITION IN CRL.MP NO.81/2021 IN SC NO.770/2019 BEFORE THE SPECIAL COURT (SPE/CBI), THIRUVANANTHAPURAM FILED BY THE REVISION PETITIONER WITHOUT ANNEXURES).

ANNEXURE 5 TRUE COPY OF THE COUNTER STATEMENT FILED BY THE PUBLIC PROSECUTOR FOR CBI IN SC THIRUVANANTHAPURAM. CrI.M.C.No.4545 OF 2021 22 APPENDIX OF CRL.MC 4545/2021 PETITIONER ANNEXURES ANNEXURE 1 THE CERTIFIED COPY OF COURT CHARGE

FRAMED AGAINST THE PETITIONER AND OTHERS DATED ANNEXURE 2 THE RELEVANT PAGE IN THE FINAL REPORT PERTAINING TO THE PETITIONER AS CHARGE NO.108. ANNEXURE 3 TRUE COPY OF STATEMENT GIVEN BY THE APPROVER U/S. 306 CR.P.C. DATED 25/02/2017 ALONG WITH TYPED COPY. ANNEXURE 4 TRUE COPY OF STATEMENT GIVEN BY THE APPROVER U/S. 306 CR.P.C. DATED 02/03/2017 ALONG WITH TYPED COPY. ANNEXURE 5 TRUE COPY OF PETITION FILED U/S. 227 OF

CR.PC BY THE PETITIONER/18TH ACCUSED AS CRL. M.P. NO.81/2021 IN SC 770/2019 ON THE FILE OF SPECIAL COURT (SPE/CBI), THIRUVANANTHAPURAM. ANNEXURE 6 THE COPY OF COUNTER STATEMENT FILED BY THE CBI PROSECUTOR IN SC 770/2019 ON THE FILE OF SPECIAL COURT (SPE/CBI), THIRUVANANTHAPURAM.

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