

**Jayaprakash Vs. State**

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**Court :** Kerala

**Decided On :** Jan-22-1981

**Reported in :** 1981CriLJ460

**Judge :** P. Janaki Amma, J.

**Appellant :** Jayaprakash

**Respondent :** State

**Judgement :**

ORDER

**P. Janaki Amma, J.**

1. The accused in Sessions Case No. 42 of 1980 of the Principal Assistant Sessions Judge, Trichur, are the petitioners. They were charge-sheeted by the prosecution for offences punishable under Sections 143, 147, 448, 323, 324 and 307 read with Section 149 of the Indian Penal Code. The Judicial Magistrate of the Second Class, Trichur, committed the accused to stand their trial before the Court of Session. The learned Sessions Judge made over the case for trial by the Assistant Sessions Judge, Trichur. The accused appeared before that Court. After the appearance of the accused in Court the case was posted for preliminary hearing under Section 227 of the Code of Criminal Procedure. After hearing the arguments on behalf of the accused and by the prosecutor the case was posted for orders on 18-11-1980. On 18-11-1980 the Court framed charges against all the

accused for offences punishable under Sections 143, 148, 448 and 307 read with Section 149, I.P.C. No other formal order was passed on that day. The revision petition is filed challenging the proceedings.

2. The main contention put forward on behalf of the revision petitioners is that the documents produced in the case do not justify framing of charges for the abovesaid offences. In the first information statement filed in the case the names of accused 1 and 2 alone were mentioned as assailants. The motive alleged is, that the accused are members of the R. S. S. while the injured and his family are the members of Marxist Communist Party, and as such, there is political rivalry between the parties. It is further contended that the proceeding framing the charge is not in conformity with the provisions contained in Section 228(1)(a) of the Code of Criminal Procedure and therefore the said order is unsustainable in law.

3. Under Section 227 of the Code it is incumbent on the Court to consider the records of the case and the documents submitted therewith, to hear the submissions of the accused and the prosecution and if the Judge considers that there are no sufficient grounds for proceeding against the accused the Court should discharge the accused and should also record its reasons for so doing. Section 228 of the Code states that if, after such consideration and hearing, the Judge is of opinion that there is ground for presuming that the accused committed the offence he may frame a charge. The argument put forward is that even in cases where a charge is to be framed it is incumbent on the Court to give its reasons and there should be a formal order framing the charge. It is contended that since there is no speaking order giving reasons for the framing of the charge it is not possible to find out whether the learned Sessions Judge has considered the documents submitted before him and therefore this is a fit case where this Court should interfere and pass appropriate orders.

4. The contention advanced has no force. Section 228 does not in terms direct that the court should pass a formal order giving its reasons for the framing of the charge. That the Legislature did not contemplate a formal order framing the charge is evident from the fact that while in Section 227 there is express mention that the order of discharge passed by the Court should be supported by reasons, there is

absence of such a provision in Section 228(1). There is reason for holding that the omission in the latter case is not accidental or inadvertent, because under the scheme of the Code, an order of discharge being a final order is liable to be challenged by the prosecution and in case it is challenged, the reasons for the discharge should be made available for scrutiny by the superior court. In case a charge is framed, the trial proceeds and an opportunity to challenge any irregularity in the charge or its validity would be available to the party affected at the conclusion of the trial.

5. Even assuming that the Court has gone wrong in framing the charge without giving reasons thereto the order framing the charge is an interlocutory proceeding and as such no revision will lie in view of Section 397(2) of the Code of Criminal Procedure. The framing of the charge does not put an end to the proceedings; the trial goes on until it culminates in acquittal or conviction. It is no doubt true, that if the Court had passed an order discharging the accused that would have been a final order. This is so because the order of discharge finally gives an end to the prosecution and therefore there is a termination of the entire proceedings; that is not so in the case of a proceeding framing the charge. Therefore, even assuming that the Court committed an irregularity in omitting to pass a formal order leading to the framing of a charge the said proceeding is not open to revision in view of Section 397(2) of the Code. The position is covered by the decision of the Supreme Court in *V. C. Shukla v. State* AIR 1980 SC 962: 1980 Cri LJ 690.

The criminal revision petition is, accordingly, dismissed.

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