

**In Re: State of Kerala**

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**Court :** Kerala

**Decided On :** Nov-22-1995

**Reported in :** 1996CriLJ1549

**Judge :** N. Dhinakar, J.

**Acts :** [Army Act, 1950](#) - Sections 125, 125(2) and 126; [Navy Act, 1957](#); [Air Force Act, 1950](#); Indian Penal Code (IPC) - Sections 306; Code of Criminal Procedure (CrPC) , 1974 - Sections 475 and 475(1); Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1978 - Rule 3

**Appeal No. :** Crl. R.C. No. 10 of 1995

**Appellant :** In Re: State of Kerala

**Judgement :**

ORDER

**N. Dhinakar, J.**

1. This revision case is based-on a letter addressed by the II Additional Assistant Sessions Judge, Kozhikode. Few facts need mentioning.
2. A case under Section 306 I. P. C. was filed against two accused and of them the second accused is a person working in the Army. The learned Magistrate committed the case to the Court of Session and the same was made over to the II

Additional Assistant Sessions Judge by the Sessions Judge, Kozhikode. It is stated that the second accused, who is a military personnel, committed an offence while he was on leave. When the accused was produced before the Magistrate, the Magistrate was not apprised of the fact that the second accused is a military personnel and as such the learned Magistrate, thinking him to be a civilian, committed him to take his trial before the Sessions Court. On receipt of the records, the learned Additional Sessions Judge entertained a doubt as to the legality of the order of committal as one of the accused is a military personnel. As the learned Sessions Judge was of the view that the committal was illegal, he has addressed a letter to the registry as stated above.

3. Section 475 Cr. P. C. recognises the rule making power of the Central Government consistent with the Criminal Procedure Code and the Army Act 1950 (Act 46 of 1950), the [Navy Act, 1957](#) (62 of 1957), and the [Air Force Act, 1950](#) (45 of 1950) and any other law relating to the Armed Forces of the Union, for the time being, in force, as to cases in which persons subject to military, naval or air force law, or such other law, shall be tried by a Court to which this Code applies or by a Court-martial. Section 475 further contemplates that whenever a person is brought before the Magistrate and charged with an offence for which he is liable to be tried either by a Court to which the Code applies or by a Court-martial, such Magistrate shall in conformity with the rules and in proper cases deliver him, together with a statement of the offence of which he is accused, to the Commanding Officer of the unit to which he belongs, or to the Commanding Officer of the nearest military, naval or air force station, as the case may be, for the purpose of being tried by a Court martial. The Central Government, in exercise of the powers under Section 475(1) of the Cr. P. C. has framed Rules in the Criminal Courts and Courts Martial (Adjustment of Jurisdiction) Rules, 1978. Rule 3 reads as follows:-

'3. Where a person subject to military, naval or air force law, or any other law relating to the Armed Forces of the Union for the time being in force is brought before the Magistrate and charged with an offence for which he is also liable to be tried by a Court-martial, such Magistrate shall not proceed to try such person or to commit the case to the Court of Session, unless -

(a) he is moved thereto by a competent military, naval or air force authority; or

(b) he is of opinion, for reasons to be recorded, that he should so proceed or to commit without being moved thereto by such authority.'

A combined reading of Section 475 and Rule 3 makes it clear that when a person subject to military, naval or air force law or any other law relating to the armed force of the Union is brought before a Magistrate and charged with an offence, then such Magistrate shall not try to proceed against such person or to commit the case to the Court of Session unless the Commanding Officer is moved by the Magistrate. Section 125 of the Army Act contemplates that when there is a concurrent jurisdiction on a criminal Court and a Court martial, it shall be in the discretion of the officer commanding the army, army corps, division or independent brigade in which the accused person is serving or such other officer as may be prescribed to decide before which Court the proceedings shall be instituted, and, if that officer decides that they should be instituted before a Court-martial, to direct that the accused person shall be detained in military custody. Section 126 of the Army Act contemplates that when a criminal Court having jurisdiction is of the opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in Section 125 at his option, either to deliver over the offender to the nearest Magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government. Sub-section (2) of the said section states that in every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the Court before which the proceedings are to be instituted for the determination of the Central Government, whose order upon such reference shall be final. The restricted provisions namely Section 475 Cr. P. C, Section 125 of the Army Act coupled with Rule 3 of the Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1978 make it clear that whenever a military, naval or air force person is accused of an offence and produced before a Magistrate, it is incumbent upon the Magistrate to address the commanding officer concerned and after receipt of the response of the commanding officer he shall decide whether the accused can be committed to the Sessions Court or tried by a Civil Court. Rule

3(b) of course gives a discretion to the Magistrate to proceed against the person in a civil Court and when the Magistrate decides to exercise such discretion, then he should pass an order giving reasons thereon for trying the offender before the Civil Court. Recording of reasons is mandated under Rule 3(b). Admittedly in this case the Magistrate has not recorded any reasons before he committed the accused to the Sessions Court for the trial. The Magistrate also did not address the commanding officer of the accused before such committal order was passed. In my view, the procedure adopted by the Magistrate in committing the accused to the Sessions Court without referring to the procedure contemplated in the above mentioned sections in the Cr. P. C. and the Army Act is illegal. As such the committal order passed by the learned Magistrate has to be quashed and accordingly it is quashed.

4. The matter will be remanded back to the learned Magistrate, who, after considering Rule 3 of the Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1978, decide whether the accused has to be committed to take his trial before the civil Court or whether he should be sent for a Court-martial. If the Magistrate takes the view that the second accused must face his trial before a civil Court, then he must record his reasons for arriving at that conclusion as contemplated under Rule 3(b) of the above said Rules.

5. This Revision Case is ordered accordingly.

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