

State of Kerala Vs. Sudhakaran

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SooperKanoon Citation : sooperkanoon.com/726069

Court : Kerala

Decided On : Jul-03-2001

Reported in : 2002(1)ALT(Cri)82; 2001CriLJ3658

Judge : R. Rajendra Babu, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 95(4), 156(3), 340, 340(1) and (2), 341, 341(2), 397, 438, 476 and 476B; [Indian Penal Code \(IPC\), 1860](#) - Sections 120B and 307; Kerala High Court Act - Sections 5(1)

Appeal No. : Crl.R.P. 186 of 1999

Appellant : State of Kerala

Respondent : Sudhakaran

Advocate for Def. : K. Ramakumar, Adv.

Advocate for Pet/Ap. : K. Jayakumar, Public Prosecutor

Judgement :

ORDER

R. Rajendra Babu, J.

1. This revision is at the instance of the State challenging the order of the 1st Additional Sessions Court, Trivandrum dt. 20.11.1998 in Crl.M.C. 2081/97. An

important question of law that has come up for consideration was whether S. 341 Cr.P.C. would contemplate an appeal at the instance of a person who has not filed any application to make a complaint under S. 340 Cr.P.C. and the court has dropped the proceedings initiated suo motu.

2. The facts of the case briefly are as follows: On 12.4.95 Sri. E.P. Jayarajan, a sitting M.L.A. sustained injuries due to gunshot while he was travelling in Rajadhani Express from Delhi to Trivandrum. The Chirala Railway Police in Prakasam District of Andhra Pradesh registered Crime 14/95 for an offence under S. 307 IPC. The respondent herein Sri. K. Sudhakaran, another sitting M.L.A., was the 3rd accused in the above crime. The respondent filed Crl. Petition No. 3509/95 before the Andhra Pradesh High Court under S. 438 Cr.P.C. for anticipatory bail. The Andhra Pradesh High Court granted anticipatory bail imposing conditions. The above conditions were periodically modified and on 29.12.95 the above court directed the respondent herein to report once in a month before the Superintendent of Police, Kannur District. It appears that the police filed a chargesheet in Crime 14/95 against two persons excluding the respondent herein. On 24.6.97 the de facto complainant Sri. E.P. Jayarajan filed a private complaint before the J.F.C.M. Court-III, Trivandrum, arraying the respondent herein as the 1st accused and six others as accused Nos. 2 to 7 alleging the commission of offences under Ss. 120B and 307 IPC. The above complaint was forwarded to the police under Ss. 156(3) Cr.P.C. and the Thampanoor Police registered Crime 148/97 for offences under S. 120B and 307 IPC. On 4.7.97 the respondent herein filed Crl.M.C. 915/97 before the Sessions Court, Trivandrum, for anticipatory bail under S. 438 Cr.P.C. After hearing both sides the Sessions Judge, Trivandrum, passed an order closing the petition on the basis of the submission made by the learned Public Prosecutor that the respondent shall not be arrested if he had complied with the condition imposed by the Andhra Pradesh High Court in Crl.M.P. 3509/95. On 23.10.97 the respondent was arrested from Thalassery Railway Station by the police and he was brought to Trivandrum and was remanded to judicial custody. The Asst. Commissioner of Police, Shankhumukhom, filed C.M.P. 3953/97 before the JFCM Court, Trivandrum, seeking police custody of the respondent from 23.10.97 to 29.10.97 and the above petition was dismissed on 24.10.97. The bail application moved by the respondent before the above court

also was dismissed. On 23.10.97 the respondent filed Crl.M.C. 2081/97 before the Sessions Court, Trivandrum, seeking bail. On 25.10.97 the State filed Crl.R.P. 95/97 before the Sessions Court, Trivandrum challenging the order of the J.F.C.M. Court refusing police custody. The arrest of the respondent was sought to be justified by the learned Public Prosecutor by submitting that the respondent had never complied with the condition imposed by the High Court of Andhra Pradesh as he did not report before the Superintendent of Police, Kannur. On 24.10.97 an affidavit was filed by the respondent before the Sessions Court declaring that he had been strictly complying with the subsequently imposed condition of the Andhra Pradesh High Court that he should report before the Superintendent of Police, Kannur, once in a month and hence the arrest of the respondent was illegal. Crl.M.C. 2081/97 and Crl.R.P. 95/97 were heard and disposed of by a common order. The learned Sessions Judge allowed the police to interrogate the respondent at the Sub Jail, Trivandrum, from 9 a.m. to 6.30 p.m. on 28.10.97 and directed the release of the respondent on bail after such interrogation by the police. The above court imposed further conditions also while granting bail. Further, the Sessions Court found that the arrest of the respondent was legal and the respondent had not complied with the direction imposed by the Andhra Pradesh High Court and the affidavit filed by the respondent that he was complying with the direction imposed by the Andhra Pradesh High Court was false and hence an enquiry under S. 340 Cr.P.C. has to be initiated. The above court further directed that a Crl.M.C. should be registered against the respondent for the enquiry under S. 340 Cr.P.C. The above orders were challenged by the respondent in Cr.M.C. 3724/97 and 3738/97 before this Court. In the meanwhile O.P. 18557/97, a habeous corpus petition, was filed before this Court challenging the legality of the arrest and the same was dismissed by this court holding that the legality of the arrest has to be considered in Crl.M.C. 3724/97. This court by a common order in Crl.M.C. 3724/97 and 3738/97 modified the conditions imposed while granting bail and also set aside the finding of the Court below that the respondent herein has filed a false affidavit dated 24.10.97 before the Sessions Court and thereby committed offences under Ss. 193 and 199 IPC. It was further directed that the Sessions Court was free to conduct an enquiry under S. 340 Cr.P.C. and to satisfy itself whether the alleged offence had been committed in

relation to the affidavit filed by the respondent dated 24.10.97 and whether it was expedient in the interest of justice to take further action in accordance with the procedure under S. 340 Cr.P.C. Thereafter the 1st Addl. Sessions Judge, Trivandrum, passed the impugned order dropping the proceedings initiated suo motu by the above court earlier. The above order is under challenge in this revision.

3. Heard the learned Public Prosecutor Sri. K. Jayakumar and the Senior Counsel Sri. K. Ramakumar for the respondent.

4. One of the main arguments advanced by the learned senior counsel for the respondent Sri. Ramakumar was that this revision was not maintainable as an appeal was provided under S. 341 Cr.P.C. against the impugned order passed under S. 340 Cr.P.C. and in view of the specific bar imposed under S. 341(2) Cr.P.C. and hence the revision has to be dismissed without going into the merits. The learned Public Prosecutor submitted that the proceedings under S. 340 Cr.P.C. was initiated by the Sessions Court suo motu and not at the instance of or on an application by the State and hence an appeal at the instance of State would not be maintainable under S. 341 Cr.P.C. but a revision alone would lie. S. 341 Cr.P.C. reads:

'Appeal.-(1) Any person on whose application any court other than a High Court has refused to make a complaint under sub-s.(1) or sub-s.(2) of S. 340, or against whom such a complaint has been made by such court, may appeal to the court to which such former court is subordinate within the meaning of sub-s.(4) of S. 95, and the superior court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, making of the complaint which such former court might have made under S. 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section and subject to any such order, an order under S. 340, shall be final, and shall not be subject to revision.'

A reading of S. 341 would reveal that a right of appeal had been conferred to two categories of persons: (1) to a person whose application to make a complaint

under S. 340 Cr.P.C. was refused by any court other than the High Court, and (2) a person against whom a complaint has been made under S. 340 Cr.P.C. Whether a person, whose application to make a complaint under S. 340 Cr.P.C. has been rejected by the High Court, has a right of appeal under S. 341 Cr.P.C. has been considered by a Division Bench of this Court in *Narayana Reddiar v. Rugmini Ammal* (2000 (3) KLT 301). There it was held that though S. 341 Cr.P.C. is a bar for preferring an appeal against the order refusing to make a complaint under S. 340 Cr.P.C., a Writ Appeal would lie under S. 5(1) of the Kerala High Court Act. In the present case an order was passed by the Sessions Court suo motu for initiating proceedings under S. 340 Cr.P.C. for holding an enquiry. The above order was set aside by this Court and the court below was directed to reconsider whether it was expedient in the interest of justice that an enquiry should be made under S. 340 Cr.P.C. in respect of an affidavit filed by the respondent before that court. Later, the Addl. Session Court passed an order dropping the proceedings under S. 340 Cr.P.C. The above order is under challenge before this Court in revision at the instance of the State. A similar question had been considered by the Allahabad High Court in *Narotam Das Agarwal v. Bhagwan Das* (AIR 1939 Allahabad 79). That was a case where the Munsiff's Court decided to make a complaint against the respondent under S. 476 Cr.P.C. for perjury and a notice was also issued. Later, the Munsiff changed his mind and dropped the suo motu proceedings initiated under S. 476 Cr.P.C. Thereafter the plaintiff filed an application for making a complaint against the respondent. That application was dismissed by the Munsiff on the ground that the plaintiff did not prefer any appeal against the order dropping the suo motu proceedings for making a complaint for perjury. The above order was challenged before the High Court. There the Allahabad High Court held that a person who had not made any application to the court for action being taken under S. 476 had no right of appeal under S. 476B (corresponds to S. 341 of the present Code). In the present case the State had not filed any application before the Court below to make a complaint under S. 340 Cr.P.C., but proceedings were initiated by the Court below suo motu. When proceedings were initiated suo motu and it was dropped by the Court, the remedy open to the State, when aggrieved by the above order, was to file a revision, and an appeal was not contemplated under S. 341 Cr.P.C.

5. The learned Senior Counsel appearing for the respondent, placing reliance on the decisions of the High Courts of Madras, Lahore and Patna, argued that an appeal would lie as against a suo motu order refusing to make a complaint under S. 340 Cr.P.C. and when an appeal was contemplated by law, a revision was not maintainable. In *Namberumal Chetty v. Mainiappa Mudali* (AIR 1931 Madras 16) the Madras High Court held that the terms of S. 476B would provide for an appeal even where a complaint was filed by a Judge suo motu and not at the instance of the applicant. That was a case where a complaint was made against the appellant suo motu invoking S. 476 Cr.P.C. when such a complaint was filed, the person against whom the complaint was filed had a right of appeal. The same view was taken by the Lahore High Court in *Master Zodpa v. Emperor* 37 Crl.L.J. 1936 at p. 1043. That also was a case where a complaint had been filed suo motu and the aggrieved person against whom the complaint was made, filed the appeal. The Patna High Court also has taken the similar view in *Mahanth Harnandan Gir v. Bawan Singh* (28 AIR 1941 Patna 592. In all the above cited decisions appeals were filed by the person against whom a complaint had been filed suo motu invoking S. 476 (corresponding to present S. 340 Cr.P.C.) S. 341 Cr.P.C. specifically provide a right of appeal to a person whose application to make a complaint is rejected by any court other than the High Court. Likewise, the person against whom a complaint under S. 340 Cr.P.C. is made also is provided a right of appeal under S. 341. The above right is not confined only to cases initiated on the complaints by any person, but on cases initiated by courts suo motu. S. 341 did not confer any right of appeal to a person aggrieved by an order dropping the suo motu proceedings initiated under S. 340 Cr.P.C. As the State did not file any application for making a complaint under S. 340 Cr.P.C., the State did not have a right of appeal and the remedy open to the State was to prefer a revision and hence this revision is maintainable.

6. The learned Public Prosecutor argued that the Addl. Sessions Court had ignored and bypassed the order of this Court and gone beyond the scope of the direction of the above order and had reopened matters which were finally decided by this Court. It was further argued that the court below proceeded on the wrong assumption that the issue involved in the case was an infructuous and dead one and that the court below made a wrong approach in the whole matter and made

unnecessary and unfounded remarks though many of those matters were not necessary to be considered in the present proceedings. It was further submitted that the State was compelled to prefer this revision mainly because of the unwarranted, ridiculous and unfounded observation and comments made by the court below on persons on authority who were not parties to the proceedings. Paragraph 2 of the order reads:

'Actually, after the passing of Ext. P1 Order dated 1.12.1997 by the Hon'ble High Court of Andhra Pradesh relaxing the only surviving bail condition, it is an infructuous and dead issue which is sought to be raked up in these proceedings. More than the fonnsic interest which the case generates, it is the political sensation which is sought to be exploited by either side in their attempt to draw dividends through the Machellian tactics of unscrupulous political opportunism that, for a criminal court, this case is just like any other ordinary case'.

In fact the controversial affidavit was filed on 24.10.1997 and the Andhra Pradesh High Court relaxed the condition for bail only on 1.12.1997. The question involved in the present proceedings was whether the affidavit filed by the respondent was false and whether an enquiry under S. 340 was necessary. The above finding of the court below that the matter had become infructuous due to the relaxation of the condition by the High Court of Andhra Pradesh on 1.12.1997 was unwarranted and inappropriate when this court had specifically directed to consider the same.

7. The learned Public Prosecutor argued that the court below had made a rather perverse in deciding the whole matter which had been directed to be decided by this Court in the common order. The direction of this Court as per the common order in CrI.M.C. 3724/97 and 3738/98 reads:

'(d) The finding that the petitioner has filed a false affidavit dated 24.10.1997 before the Court of Sessions, Trivandrum and thereby committed offence under Ss. 193 and 199 IPC is vacated. The Court of Sessions is free to conduct an enquiry under S. 340 CrI.P.C. and satisfy itself whether the offence, as alleged, has been committed in relation to the affidavit filed by the petitioner dated 24.10.1997 and it is expedient in the interest of justice to take further action in accordance with the procedure prescribed under S. 340 Cr.P.C. If the Sessions

Court decides to proceed with the inquiry under S. 340 Cr.P.C. If the Sessions Court decides to proceed with the inquiry under S. 340 Cr.P.C., an opportunity should be given to the petitioner to appear before the Court and participate in the inquiry.'

As per the above direction the court below had only to decide whether the offence as alleged has been committed in relation to the affidavit filed by the respondent dated 24.10.1997 and whether it was expedient in the interest of justice to take further action in accordance with S. 340 Cr.P.C. The court below proceeded on the wrong assumption that the arrest of the respondent was for violation of the condition imposed by the Andhra Pradesh High Court in Crl. Petition 3509/95. In fact the arrest was not for violation of any condition imposed by the Andhra Pradesh High Court, but was made in Crime 148/97 of Thampanoor Police Station registered for offences under Ss. 307 and 120B IPC. When the respondent moved for anticipatory bail in Crime 148/97, the Public Prosecutor submitted that the respondent shall not be arrested if the respondent had been complying with the direction imposed by the Andhra Pradesh High Court. But the Court below proceeded on the assumption that the arrest was for violation of the bail condition imposed by the Andhra Pradesh High Court. In paragraph 8 of the impugned order the court below held:

'When this is the settled legal position even with regard to the power of an inferior criminal court, to locate a power of arrest in the police on their subjective satisfaction that the accused has committed breach of a bail condition imposed by the court would be pernicious, if not disastrous. Here, what happened was A1 who was on bail granted by the Honourable High Court of Andhra Pradesh and whose liberty was assured in the Thampanoor Crime also if he complied with the order dated 4.8.1995 of the Andhra Pradesh High Court, was arrested by the police during the dead of the night from a busy railway station in the most insulting manner for the alleged violation of an assumed condition in the bail order dated 4.8.1995. I have no doubt that it was Ext. C2 letter dated 13.10.1997 by the Kannur S.P. to the D.G.P. at Thiruvananthapuram which sparked off the operations culminating in the dramatic arrest of a member of the Legislative Assembly. Leave alone the Law Officers of the State, even a habitual offender, if

consulted would have advised the police that they cannot touch him for the alleged infraction of the bail condition imposed by a Court without that court ordering his arrest.'

The learned Public Prosecutor further submitted that this court had already found that the arrest legal and justified, but the court below ignoring the above finding of this court had gone beyond the scope of the scope of the directions of this court and found that the arrest was illegal and without any authority. The last portion of paragraph 8 of the impugned order reads:

'My indubitable conclusion on the materials before me is that the arrest of A1 on 22.10.1997 was clearly illegal. Whoever be the master on whose advice (or direction?) the police made the manhunt for the peoples' representative and effected his unceremonious arrest, the police were acting illegally, recklessly and irresponsibly.'

The court below further held in paragraph 9:

'When the question whether A1 committed any default in reporting before the Kannur S.P. itself is not a fact in issue, the further question whether A1 was reporting before the Kannur S.P. does not arise.'

This Court had directed the court below to consider whether an offence as alleged had been committed in relation to an affidavit filed by the respondent. But the court below had made an unwarranted finding that it was not a fact in issue. In fact this court had made a specific finding that the arrest of the petitioner was legal and justified for the purpose of bail. In paragraph 11 of the common judgment this Court held:

'It cannot be said that the court below was totally unjustified in considering the question whether the arrest of the petitioner is legal and justified.'

Further it was held:

'So, it is made clear that whatever is stated by the Court below in the impugned order regarding the legality of the arrest is only for the limited purpose of

considering the application for bail and it will not be made use of for any other purpose.'

While holding that the arrest was legal and justified, this Court made the above caution virtually to the prosecution not to make use of the above finding of legality of arrest as a petition for habeas corpus as O.P. 18557/97 had been filed before this Court challenging the legality of the arrest. Further paragraph 4 of the impugned order would reveal that a suit was also filed claiming damages of Rs. 50 lakhs alleging that the arrest was illegal. Infact, the finding of the Sessions Court that the arrest was legal would stand reaffirmed by this Court as per the common order in Crl.M.C. 3734 and 3738 of 1997 by imposing the following bail condition also:

'(c) If his presence before the Investigating Officer is required for interrogation, the Investigating Officer will file an application before the court of the of the Judicial First Class Magistrate III, Trivandrum, in which case, the court will pass appropriate orders assessing he necessity of further interrogation in view of the fact that the petitioner has already been interrogated for 3 consecutive days from 28.10.1997 to 30.10.1997.'

If this Court was of the view that the arrest was illegal, there was no possibility of imposing such a further condition by this Court. In paragraph 12 of the judgment this court again observed:

'But, taking into account the fact that the condition imposed by the Court of Sessions, Trivandrum is in an entirely different crime, i.e., Crime No. 148 of 1997 of Thampanoor Police Station, it cannot be said that the court below committed contempt of the order of the High Court of Andhra Pradesh'.

The above observation also would indicate that this court had taken the view that the arrest of the respondent was in Crime 148/97 of Thampanoor Police Station and not for violating the bail condition imposed by the High Court of Andhra Pradesh. The court below ignored the above finding of this Court and entered a conflicting or a contradictory finding that the arrest was illegal on a proceeding on the same bail application. The court below had no authority to pass such an order

when this court had already entered a finding that the arrest was legal for the purpose of bail and thus exceeded in exercise of his jurisdiction.

8. The real controversy for adjudication before the Session Court as well as before this court in Crl.M.C. 3734/97 and 3738/97 was whether the respondent had committed the alleged offences in relation to the affidavit filed by him dt. 24.10.97. While granting anticipatory bail, the Andhra Pradesh High Court imposed a condition directing the respondent to report before the Superintendent of Police, Kannur, every month. When the petition for anticipatory bail was closed by the Sessions Court, it made a reference of the order of the Andhra Pradesh High Court passed in Crl.M.P. 3509/95 dt. 4.8.95. In fact the condition imposed on the above Crl.M.P. 3509/95 on 4.8.95 had been modified subsequently and the condition to report before the Superintendent of Police, Kannur, was subsequently imposed and the parties were on dispute only with respect to the compliance of the above subsequently imposed condition whether the respondent had reported before the Superintendent of Police, Kannur, every month as directed by the High Court of Andhra Pradesh. But the court below made a curious approach and observed that the respondent was complying with the direction in Crl.M.P. 3509/95 dt. 4.8.95. It was observed:

'Thus, the question whether A1 was punctually complying with the subsequent order dated 29.12.1995 by reporting the S.P. Kannur, is really not a fact in issue. Hence the question whether A1 was regularly reporting before the S.P. of Kannur does not really arise for determination'.

The learned Public Prosecutor submitted that the above finding or observation by the court below virtually was a flagrant violation of the order of this Court and amounting to a contempt. I am afraid, the unnecessary, unwarranted and ridiculous comments and the intemperate language used and also the anxiety shown by the court below to ignore the findings and directions of this court would tempt to impress anyone that the personal prejudice of the 1st Addl. Sessions Judge, Trivandrum, had gone in to the decision making. The court below had proceeded in considering the question, ignoring the direction of this Court and gone beyond all moderations and judicial propriety by entering different findings

just contradictory to the findings of this Court and made sarcastic and unwarranted comments on the conduct of persons who were not parties to the proceedings and also on the JFCM, who had remanded the respondent to judicial custody. The learned Public Prosecutor further represented that the court below had approached the entire matter on a preconceived notion and made unnecessary and unwarranted comments departing from sobriety, moderation and reserve. The learned Public Prosecutor pointed out the following comments:

'Leave alone have the Law Officers of the State, even a habitual offender, if consulted, would have advised the police that they and cannot touch him for the alleged infraction of the bail condition imposed by a Court without that court ordering his arrest. The saddest part is that the learned Judicial Magistrate of First Class III, Thiruvananthapuram had no qualms to proceed from his residence to the Police Guest House, Thiruvananthapuram at 8.30 P.M. on 22.10.1997 to remand A1 to judicial custody for the reason that certain political parties who had assembled at his residence told him that a political clash might ensure if A1 was produced at his residence. (Vide the remand order of A1). Even the police to do not appear to have made any such request.'

XXX XXX XXX XXX 'Whoever be the masters on those advice (or direction?) the police made the manhunt for the peoples' representative and effected his unceremonious arrest, the police were acting illegally, recklessly and irresponsibly.'

The learned Public Prosecutor further submitted that the court below had made the above unnecessary and unwarranted comments on the J.F.C.M. who remanded the respondent and also on the authorities on power though consideration of any such matter was not necessary for the proper adjudication of the matter involved in the above case and hence liable to be expunged. The Supreme Court in *Dr. Raghubir Saran v. State of Bihar and Anr.* (AIR 1964 SC 1) held:

'Even so, a duty is cast upon the judicial officer or not to deflect himself from the even course of justice by making disparaging and undeserving remarks on persons that appear before him as witnesses or otherwise. Moderation in the

expression lends dignity to his office and imparts greater respect for judiciary. But occasions do arise when a particular Judge, without any justification, may cast aspersions on a witness or any other person not before him affecting the character of such witness or person. Such remarks may affect the reputation or even the career of such person. In such a case the appellate court in a suitable case may judicially correct the observations of the lower court by pointing out that the observations made by that Court were not justified or were without any foundation or were wholly wrong or improper.'

There it was further held that the unnecessary comments or observations made on persons not party to the litigation can be expunged invoking the inherent powers of the Court. The Supreme Court in *Jage Ram v. Hans Raj Midha* (AIR 1972 SC 1140) considering the matters to be kept in view while considering the question whether the remarks made by the Judge were justified or not and held:

'While deciding whether the remarks in a judgment were disparaging the matters to be considered are (a) whether the party whose conduct is in question is before the Court or has any opportunity of explaining or defending himself, (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. Judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve.'

In *Mangilal & Ors. v. State of M.P.* ((1994) 4 SCC 564) the Supreme Court held that it is essential that a Judge should not allow his personal prejudice to go into the decision making. The Supreme Court in *State of Karnataka v. Registrar General, Karnataka High Court* (AIR 2000 SC 2526) held:

'Judicial decorum requires that judgments and orders should confine to the facts and legal points involved in the particular cases which Judges deal with. Judicial disposition is definitely different from a paper presented for seminar discussion. Nor can it be equated with a dissertation. May be, sometimes Judges would, perhaps wittingly or even unwittingly, just outside the contours of the litigation, but even such overlapping should be within bounds of propriety and sobriety'.

The Court below had made unnecessary and unwarranted comments and observations on persons on authority though they were not parties to the proceedings and hence those comments, observations and findings are liable to be expunged. The observation regarding the conduct of the J.F.C.M. was quite unfortunate and inappropriate. The learned Magistrate had explained the situation properly even in the remand order. In this context it would be relevant to note that the respondent was arrested on 22.10.97 and on the same day O.P. 11557/97 (Habeas Corpus) was filed before this court by one M.S. Prakash Panicker, a political associate. In fact, the court below did not make a proper approach in the matter which was directed to be considered by this Court in the common order in Crl.M.C. 3724/97 and 3738/97. On the other hand, it made a wrong approach on the entire matter, made findings just contrary to the specific findings entered by this Court in the common order and made observations and comments which exceed all bounds of propriety and sobriety. The elaborate evidence let in by the prosecution was ignored on flimsy and unconvincing reasons. Hence the order of the court below is liable to be set aside and the matter has to be remanded to the Sessions Court for disposal strictly in accordance with the directions of this Court in Crl.M.C.3724/97 and 3738/97.

9. In the result the impugned order passed by the 1st Addl. Sessions Judge, Trivandrum is set aside. The matter is remanded to the Session Court, Trivandrum, to pass an order in accordance with the directions of this Court in Crl.M.C. 3724/97 and 3738/97. The court below shall pass an order within a period of three months from the date of receipt of this order. The Registry shall send back the entire records forthwith.