

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 12<sup>TH</sup> DAY OF JUNE 2024 / 22ND JYAISHTA, 1946

CRL.MC NO. 4909 OF 2024

CRIME NO.248/2022 OF Angamali Police Station, Ernakulam

AGAINST THE ORDER DATED 30.05.2024 IN SC NO.995 OF 2022 OF

ADDITIONAL DISTRICT COURT & MOTOR ACCIDENT CLAIMS TRIBUNAL, NORTH

PARAVUR

PETITIONER/ ACCUSED NO.1 :

MUHAMMED SAHIR  
AGED 29 YEARS  
S/O UNNIMOYI, ADIMAKKARA,  
KODUVALLY, KOZHIKODE,  
PIN - 673572

BY ADVS.  
V.JOHN SEBASTIAN RALPH  
VISHNU CHANDRAN  
RALPH RETI JOHN  
APPU BABU  
GIRIDHAR KRISHNA KUMAR  
GEETHU T.A.  
APOORVA RAMKUMAR  
MARY GREESHMA

RESPONDENT/ COMPLAINANT :

STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, PIN - 682031

BY SMT.SREEJA V., PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
12.06.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

“C.R.”

**BECHU KURIAN THOMAS, J.**

=====

**CrI.M.C. No.4909 of 2024**

=====

**Dated this the 12<sup>th</sup> day of June, 2024**

**ORDER**

The right of an accused to adduce all his evidence during a trial is raised for consideration in this petition under section 482 of the Code of Criminal Procedure 1973.

2. Petitioner as the first accused in S.C.No.995 of 2022 on the files of the Additional Sessions Court, North Paravur is facing prosecution along with 12 others for the offences under Sections 20(b)(ii)(B) and 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985. After the prosecution examined 77 of the 155 witnesses cited by them, the defence was called upon to enter their evidence. Though petitioner filed a list of five defence witnesses, summons was issued to only three of the five. By the impugned order, the learned Sessions Judge dismissed the application to issue summons to witnesses Nos.1 and 3 in the witness list. Petitioner is aggrieved by the impugned order dated 30.05.2024.

3. Sri. Ralph Reti John, the learned counsel for the petitioner, submitted that the impugned order is erroneous as it has denied the accused his right to adduce all his evidence. It was further submitted that if summons to all the witnesses are not issued it would amount to denial

of the right to fair trial and cause prejudice to the defence evidence. The learned Counsel also submitted that the observation of the learned Sessions Judge that the attempt is to delay the trial is wholly without any basis.

4. I have heard Smt. Sreeja V., the learned Public Prosecutor, also.

5. Witness Nos.1 and 3 in the list of defence witnesses submitted by the petitioner are not persons who have already been examined. The trial court refused to issue summons to two of the five witnesses stating that they are not material to determine the points involved in the case and that those witnesses are attempted to be examined to drag the proceedings indefinitely. Out of the five witnesses named in the defence list, summons were issued to three and they were examined as well. It is thereafter that the trial court refused to issue summons to the remaining two witnesses.

6. Section 233 Cr.P.C. deals with the defence evidence. As per the provision, if an accused is not acquitted after prosecution witnesses are examined, then the accused shall be called upon to enter his defence and adduce any evidence he may have, in support thereof. Calling upon the accused to enter his defence is an essential part of a criminal trial. The purpose of providing such an opportunity to the accused cannot be defeated nor can it be lost sight of by the trial judges. A complete and effective compliance of Section 233(1) Cr.P.C. ought to be ensured in every criminal trial. In the decision in **Mrs. Kalyani Baskar v.**

**Mrs. M.S Sampornam [(2007) 2 SCC 258]** while dealing with the powers under section 243 Cr.P.C it was observed that *'Fair trial' includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and courts should be jealous in seeing that there is no breach of them.*

7. When the accused submits a list of witnesses, it is not open for the court to pick and choose the witnesses for issuing summons. Though the court is certainly bestowed with the power to refuse to summon a witness, such refusal can only be for reasons to be recorded in writing, which have to relate to delaying tactics or defeating the ends of justice or as being vexatious. Reference to the decision in **Rajesh Talwar and Another v. Central Bureau of Investigation and Another [(2014) 1 SCC 628]**, is appropriate in this context.

8. Normally, it is not proper for a trial court to conclude during the middle of a trial, that some witnesses would not advance the case of the accused and are not necessary to be examined, while others would. As the defence is entitled to take up inconsistent defences during a trial, the court would be generally handicapped to fully envisage the different contentions that could be raised by the accused. Since the defence is entitled to adduce all its evidence under law, it is not proper for the trial court to restrict the witnesses mentioned in the list of defence witnesses,

in the absence of any sufficient material available. Though in the impugned order, the trial court refused to issue summons to two witnesses stating that it was intended to delay the trial, it is not evident how any delay would occur or how issuing summons to the said two witnesses would defeat the ends of justice. Mere reference to the words delay or vexatious is not sufficient to deprive the accused of his valuable right to a fair trial.

9. Further, during the course of a criminal trial, it is not for the court to decide the credit that can be attached to the evidence that a defence witness may bring in. Similarly, the court cannot also foresee the nature of evidence, the defence intends to adduce through a particular witness. The right of the defence to adduce all its evidence is part of the fair procedure contemplated under Article 21 of the Constitution of India. Hence the refusal to issue summons to witnesses named in the list of defence witnesses submitted by the accused should be an exception, to be resorted to very sparingly.

10. The circumstances arising in the instant case do not reflect any exceptional situation which would delay the trial or be vexatious. Though the learned Sessions Judge has observed that the request for issuing summons to the two witnesses is to drag the proceedings indefinitely, this Court is of the view that the said observation is without any basis or legal justification. Moreover, if there is any attempt to drag or delay the proceedings, the court will be entitled to fix the day on which the

witnesses could be examined and ensure that the trial is not delayed. Viewed in the above perspective, the impugned order is erroneous and is liable to be set aside.

Accordingly, the order dated 30.05.2024 in C.M.P.No.1195 of 2024 in S.C.No.995 of 2022 on the files of the Additional Sessions Court, North Paravur is set aside and the trial court is directed to issue summons to the remaining two witnesses in the list of defence witnesses submitted by the petitioner. Needless to mention the petitioner shall co-operate with the trial and examine the witnesses on the day of their appearance itself.

The CrI.M.C.is allowed as above.

Sd/-

**BECHU KURIAN THOMAS, JUDGE**

RKM

APPENDIX OF CRL.MC 4909/2024

PETITIONER'S ANNEXURES :

Annexure 1                    TRUE COPY OF THE WITNESS LIST AND  
DEFENCE PETITION FILED BY THE PETITIONER  
IN CMP 1195/2024 DATED 03.05.2024

Annexure 2                    CERTIFIED COPY OF THE ORDER IN CMP NO.  
1195/2024 IN S.C NO. 995/2022 ON THE  
FILES OF ADDL. SESSIONS COURT, NORTH  
PARAVUR, DATED 30.05.2024