



2024:KER:67342

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

THURSDAY, THE 5TH DAY OF SEPTEMBER 2024/14TH BHADRA, 1946

CRL.MC NO. 6370 OF 2023

(CRIME NO.2/2007 OF VACB, ERNAKULAM)

(AGAINST THE ORDER DATED 20.07.2023 IN CC NO.33 OF
2011 OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE,THRISSUR)

PETITIONER/ACCUSED:

V.I. THANKAPPAN, AGED 74 YEARS
S/O IYPE, VADAKKEPARAMBIL HOUSE,
CHAKKANTHARA, GANDHI NAGAR, PALAKKAD
PIN - 678006 REPRESENTED BY HIS SON
THARUN V. THANKAPPAN, AGED 38 YEARS,
S/O.V.I.THANKAPPAN, VADAKKEPARAMBIL HOUSE,
CHAKKANTHARA,GANDHI NAGAR, PALAKKAD-678006.

BY ADVS.SHRI.T.KABIL CHANDRAN
T.D.ROBIN
R.ANJALI
AAYSHATH NAJILA SCHEMNAD

RESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA REPRESENTED BY
SPECIAL PUBLIC PROSECUTOR VACB,
HIGH COURT OF KERALA, PIN - 682031.
- 2 THE SUPERINTENDENT OF POLICE,
VACB, SPECIAL CELL,
ERNAKULAM, PIN - 682017.

BY P.P.SRI.G.SUDHEER
AMICUS CURIAE SHRI.RENJITH B. MARAR
AMICUS CURIAE SHRI.V.RAMKUMAR NAMBIAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
05.09.2024, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

**"C.R."****ORDER**

The challenge in this Crl.M.C. is to the order dated 20.7.2023 in C.C.No.33 of 2011 on the file of the Court of the Enquiry Commissioner and Special Judge, Thrissur.

2. The petitioner is the accused in the Calendar Case. He is alleged to have committed offence punishable under Section 13(1) (e) read with Section 13(2) of the Prevention of Corruption Act.

3. The petitioner, a 74-year-old man, was diagnosed with 'Alzheimer's Dementia' by the Consultant Neurologist at District Hospital, Palakkad. The counsel for the petitioner filed an application under Section 329 of the Code of Criminal Procedure (Cr.P.C.) on 14.2.2023 requesting the trial court to try the fact of mental incapacity of the petitioner/accused due to Alzheimer's Dementia, contending that he is incapable of making his defence. The learned Special Judge directed the petitioner to be present in Court and, on interaction, found that he was not suffering from any infirmity or unsoundness of mind. Nevertheless, on the insistence of his counsel, the Court directed the Superintendent of the District Hospital, Thrissur, to refer the accused to the Department of Neurology, observe him and issue a certificate about the soundness of his mind.



Thereafter, the Doctors in the Department of Neuromedicine, Medical College, Thrissur, examined the petitioner and issued a certificate (Annexure-A3) stating that he is suffering from severe dementia, which may be due to multi-factorial causes and that since it is progressive, chances of a complete recovery is less. The doctor also pointed out that the mental status of the petitioner is to be assessed in detail by a psychiatrist, and the patient requires the help of a caretaker to take care of his daily pursuits.

4. The learned Special Judge, after considering the report submitted from the Medical College, Thrissur, directed that if it is required by the party who submitted the application, he shall take or produce the petitioner before the Mental Health Centre, Thrissur for observation and to get a report. The learned Special Judge further directed the Superintendent of Mental Health Centre, Thrissur, to issue a certificate about the mental status of the petitioner if he approaches the Mental Health Centre, Thrissur, as per the rules.

Arguments

5. The learned counsel for the petitioner submitted that the petitioner is incapacitated to defend his case due to his illness. The learned counsel submitted that 'Alzheimer's Dementia' prevents the petitioner from giving instructions to his counsel appearing in the trial Court, and therefore, he is entitled to the protection contained in



Chapter XXV of the Cr.P.C. The learned counsel for the petitioner also submitted that the petitioner is suffering from mental illness within the meaning of the term “unsound mind” as contemplated in the Cr.P.C.

6. This Court appointed Adv.Shri. V.Ramkumar Nambiar & Adv.Shri.Renjith B.Marar as Amici Curiae to assist the Court.

7. Shri.V.Ramkumar Nambiar submitted that the materials placed before the Court would suggest that the petitioner is incapable of defending himself. The learned Amicus Curiae submitted that a conjoint reading of Sections 329 of the Cr.P.C and Section 105 of the Mental Healthcare Act, 2017 indicates that when an accused suffering from severe dementia is brought before the Court, the Court shall first decide on the issue regarding the soundness of the mind of the accused and his consequent incapacity to make his defence. Shri.Ramkumar Nambiar submitted that if it appears to the Court that the accused is suffering from severe dementia, the Court has the onerous responsibility to proceed under Chapter XXV of the Code and Section 105 of the Mental Healthcare Act, 2017. Shri.Ramkumar Nambiar further submitted that a fair trial demands that the Court should follow the procedure mentioned above.

8. The learned Amicus Curiae Shri.Renjith B.Marar



submitted that, as far as the disease 'Alzheimer's Dementia' is concerned, there is no known treatment protocol that can stop the progression of the disease and the mere reason that there is no explicit provision in the statute shall not prevent the Court to recognize that dementia is a form of mental disability that may affect the capacity of the accused from participating in the judicial proceedings against him.

9. The learned Amici Curiae have taken me to the various provisions in Chapter XXV of the Cr.P.C and Chapter XXVII of the Bharatiya Nagarik Nyaya Sanhita, 2023 (for short 'the Sanhita') and the relevant precedents in support of their contentions.

10. The issues that arise for consideration are:

- (1) Whether a person who has acute dementia is entitled to the protection contained in Chapter XXV of the Cr.P.C and Chapter XXVII of the Sanhita.
- (2) Whether the provisions of Chapter XXVII of the Sanhita can be made applicable to a pending application filed on behalf of an accused affected with intellectual disability in view of the saving clause provided in Section 531 of the Sanhita.

Issue No.1

11. The essential question is the fitness of an accused who is suffering from multi-factorial dementia to stand trial. 'Dementia' is a neurogenerative disease that starts slowly but gets worse over time. It is characterized by changes in the structure of the brain that



cause the brain cells to shrink, and to eventually die. As dementia advances, various symptoms start to surface, which include problems with language, memory loss, mood swings, loss of motivation, self-neglect, and behavioural issues. No known treatment protocol can stop or reverse the progression of dementia. People affected by dementia become increasingly reliant on others for assistance as the disease progresses.

12. The learned counsel for the petitioner had filed an application under Section 329 of the Cr.P.C seeking to postpone the trial on the ground that due to dementia, the petitioner is incapacitated to defend himself. The learned Special Judge held that if the party requires, he can get examined by the Superintendent of the Mental Health Centre, Thrissur. The learned Special Judge also directed the Superintendent of the District Hospital to issue a certificate regarding the mental status of the petitioner if he approaches.

13. The principle of fair trial demands that the accused is informed of his accusation and given an opportunity to prefer his defence. He has a right to be defended by a lawyer of his choice. Mental or intellectual disability prevents an accused from enjoying the above protection. The Code of Criminal Procedure contemplates the various procedures to be followed by a Court when an inquiry or



trial is to proceed against an accused who is a person of unsound mind. The relevant provisions applicable to the present facts are Sections 328 to 331 of the Cr.P.C.

14. The statutory scheme (Sections 328 to 331 of Cr.P.C.) contemplates the procedure to be followed when the Court deals with an accused person of unsound mind. Section 328 of the Code provides the procedure to be followed in case the accused is a lunatic. Under Sub-section (1), when a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is to be held is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness of mind and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other officers as a witness, and shall reduce the examination to writing. Sub-section (2) provides that pending such examination and inquiry, the Magistrate may deal with such person in accordance with the provisions of Section 330 of Cr.P.C. Sub-section (3) provides that if the Magistrate is of the opinion that the person referred to in Sub-section (1) is a person of unsound mind and consequently, incapable of making his defence, he shall record a finding to that effect and shall postpone further proceedings in the



case. Section 329 of Cr.P.C provides the procedure in case of a person of unsound mind tried before Court. Under sub-section (1), if at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and, consequently, incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and postpone further proceedings in the case. Section 331 provides the procedure for resumption of inquiry. Under sub-section (1), whenever an inquiry or a trial is postponed under Section 328 or Section 329 the Magistrate or Court, as the case may be, at any time after the person concerned has ceased to be of unsound mind, resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court. Under Sub-section (2), when the accused has been released under Section 330, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints on this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

15. Therefore, when in the committal proceedings, the



learned Magistrate finds materials or circumstances to doubt the capacity of the accused to stand for trial, he is bound to proceed as provided under Section 328. If the Magistrate has reason to believe that the accused produced before him is of unsound mind and, consequently, incapable of making his defence, the Magistrate shall cause that accused to be examined by the civil surgeon or such Medical Officer as the State Government directs. The Magistrate shall inquire into the fact of such unsoundness of mind and shall examine the said surgeon or Medical Officer. If, on such inquiry, the Magistrate is satisfied that the accused is of unsound mind and therefore incapable of making his defence, he shall record a finding to that effect. He shall then postpone the further proceedings in the case. The Magistrate can proceed with the case only if, upon conducting the inquiry, he is satisfied that the accused is not of unsound mind and consequently not incapable of making his defence. If he records a finding under sub-section (3) that the accused is incapable of making his defence consequent to the unsoundness of mind and postpones the further proceedings in the case, he shall then proceed as provided under Section 331 of the Code. [vide: **Aji @ Ajit Kumar v. State of Kerala (Cri.A.No.957/2008) (2013 (1) KLT SN 55 (C.No.46))**].

16. On 7.7.2018, by way of Act 10 of 2017, the Mental



Healthcare Act, 2017 came into force. Section 105 of the Act deals with the procedures to be followed in a judicial process where any proof of mental illness of a person is produced. Section 105 reads thus:-

“105.Question of mental illness in judicial process.- If during any judicial process before any competent Court, proof of mental illness is produced and is challenged by the other party, the Court shall refer the same for further scrutiny to the concerned Board and the Board shall, after examination of the person alleged to have a mental illness either by itself or through a committee of experts, submit its opinion to the Court.”

17. “Mental illness” is defined in Section 2(s) of the Act as follows:-

“mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by sub-normality of intelligence;”

18. Under Section 105 of the Mental Healthcare Act, if any proof of mental illness is produced and is challenged by the other side, the Court shall refer the same for further scrutiny to the Board concerned, and the Board shall, after examination of the person alleged to have a mental illness, either by itself or through a committee of experts, submit its opinion to the Court. The opinion



of the Board referred to in Section 105 of the Mental Healthcare Act shall form the foundation of the decision of the Court on the question of whether the trial in respect of the person could be proceeded or not.

19. The Sanhita came into effect on 1.7.2024. Chapter XXVII of the Sanhita deals with the provisions as to accused persons of unsound mind. The relevant provisions in the present fact situation are Sections 367 and 368 of the Sanhita, which are extracted below:-

“367. Procedure in case of accused being person of unsound mind

(1) When a Magistrate holding an inquiry has reason to believe that the person against whom the inquiry is being held is a person of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness of mind, and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other medical officer as a witness, and shall reduce the examination to writing.

(2) If the civil surgeon finds the accused to be a person of unsound mind, he shall refer such person to a psychiatrist or clinical psychologist of Government hospital or Government medical college for care, treatment and prognosis of the condition and the psychiatrist or clinical psychologist, as the case may be, shall inform the Magistrate whether the accused is suffering from unsoundness of mind or intellectual disability:

PROVIDED that if the accused is aggrieved by the information given by the psychiatric or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of--



- (a) head of psychiatry unit in the nearest Government hospital; and
- (b) a faculty member in psychiatry in the nearest Government medical college.

(3) Pending such examination and inquiry, the Magistrate may deal with such person in accordance with the provisions of section 369.

(4) If the Magistrate is informed that the person referred to in sub-section (2) is a person of unsound mind, the Magistrate shall further determine whether the unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate shall record a finding to that effect, and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if he finds that no prima facie case is made out against the accused, he shall, instead of postponing the enquiry, discharge the accused and deal with him in the manner provided under section 369:

PROVIDED that if the Magistrate finds that a prima facie case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the proceeding for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused, and order the accused to be dealt with as provided under section 369.

(5) If the Magistrate is informed that the person referred to in sub-section (2) is a person with intellectual disability, the Magistrate shall further determine whether the intellectual disability renders the accused incapable of entering defence, and if the accused is found so incapable, the Magistrate shall order closure of the inquiry and deal with the accused in the manner provided under section 369.

368. Procedure in case of person of unsound mind tried before Court.

(1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently



incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness of mind and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

(2) If during trial, the Magistrate or Court of Session finds the accused to be of unsound mind, he or it shall refer such person to a psychiatrist or clinical psychologist for care and treatment, and the psychiatrist or clinical psychologist, as the case may be, shall report to the Magistrate or Court whether the accused is suffering from unsoundness of mind:

PROVIDED that if the accused is aggrieved by the information given by the psychiatrist or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of--

(a) head of psychiatry unit in the nearest Government hospital; and

(b) a faculty member in psychiatry in the nearest Government medical college.

(3) If the Magistrate or Court is informed that the person referred to in sub-section (2) is a person of unsound mind, the Magistrate or Court shall further determine whether the unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate or Court shall record a finding to that effect and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if the Magistrate or Court finds that no prima facie case is made out against the accused, he or it shall, instead of postponing the trial, discharge the accused and deal with him in the manner provided under section 369:

PROVIDED that if the Magistrate or Court finds that a prima facie case is made out against the accused in respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the trial for such period, as in the opinion of the psychiatrist or clinical psychologist, is



required for the treatment of the accused.

(4) If the Magistrate or Court finds that a prima facie case is made out against the accused and he is incapable of entering defence by reason of intellectual disability, he or it shall not hold the trial and order the accused to be dealt with in accordance with section 369.”

20. Sections 367 and 368 are almost *pari materia* with Sections 328 and 329 of the Code. The fundamental difference between the relevant provisions in the Code and the Sanhita is that, in the Code, protection is extended to a person of unsound mind or a person suffering from mental retardation who is incapable of entering defence by reason of such unsoundness or mental retardation whereas, in the Sanhita, the protection is extended to a person of unsound mind or a person suffering from intellectual disability.

21. The Mental Healthcare Act, 2017 defines “mental illness” as a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by sub-normality of intelligence.

22. A conjoint reading of the Mental Healthcare Act and the relevant provisions in the Sanhita indicates that the Legislature has



given a wider canvass to the phrase 'incapability of making defence' by incorporating the term "intellectual disability". While enacting the Sanhita, the Legislature has noted of the definition of the term "mental illness" provided in the Mental Health Care Act, 2017.

23. The fundamental objective of the scheme of the relevant statutes is to provide a fair and impartial trial to the accused. It has the demonstrable object that the accused should not be prejudiced. A fair trial is to be conducted in such a manner that it would ostracize injustice, prejudice etc. In a criminal trial, the accused, who is of unsound mind or is faced with intellectual disability in such a manner that he is not able to comprehend the gravity of the charges levelled against him, would not be in a position to explain the criminal acts alleged against him. He is the only competent person knowing his acts relating to the incriminating circumstances. It is his fundamental right to provide this vital information to his counsel. This is the essential reason that provisions have been engrafted in the Code, in the Sanhita and in the Mental Healthcare Act, which lay down that an enquiry or trial of a person who is incapable of defending himself due to the disability must be postponed till he can understand the proceedings. Denial of such protection will deny his fundamental human right to have a fair trial, as provided in Article 21 of the Constitution of India. It is trite



that there is not even a need for an application under the relevant Chapter to try the fact of unsoundness or intellectual disability; rather, it is the mandatory duty of the Court. Dementia is a progressive loss of mental capacity that includes loss of complex brain functions over a period of time. As per the available medical advancements, dementia continues to be a disease/disorder without a cure, and the best that can be offered is care and support. It is a form of mental disability that may affect the capacity of an accused person to effectively participate in judicial proceedings. The 'intellectual disability' referred to in Section 368 of the Sanhita includes Alzheimer's Dementia if it is in such a stage in which the accused person is incapable of making his defence. Therefore, I am of the view that a person suffering from 'Alzheimer's Dementia', which is of such a degree that renders him incapable of making his defence, is entitled to the protection contained in Chapter XXV of the Code and Chapter XXVII of the Sanhita.

24. It is the right of the accused to have a fair trial as provided under Article 21 of the Constitution, which is sacrosanct of criminal jurisprudence. Therefore, if the provisions of the Sanhita are not extended retrospectively in cases where the accused person is affected by any intellectual disability of such a degree that renders him incapable of making his defence, there would be a failure of fair



trial.

25. In **Xxx v. State of Kerala (2023 (4) KHC 443 = 2023 (4) KLT 671)**, relying on Section 105 of the Mental Healthcare Act, 2017 this Court held that if any proof of mental illness is produced and is challenged by the other side, the Court should refer the same to the Board constituted under the Mental Healthcare Act and the opinion of the Board shall form the foundation of the decision of the Court on the question whether the trial in respect of the person could be proceeded with or not. Applying the principle of *lex posterior rule*, the presumption is that the Legislature, while enacting the Sanhita, has taken note of Section 105 of the Mental Healthcare Act. Therefore, the procedure to be followed while dealing with persons of unsound mind or intellectual disability is Chapter XXVII of the Sanhita, and the reference to the Board as mentioned in Section 105 of the Mental Healthcare Act is not mandatory as the protection mentioned therein has been expanded in Chapter XXVII of the Sanhita. Issue No.1 is answered accordingly.

Issue No.2

26. The Sanhita came into effect on 1.7.2024. Section 531 of the Sanhita is the saving clause. Section 531 reads thus:-

"Section 531 : Repeal and savings

(1) The Code of Criminal Procedure, 1973 (2 of 1974) is



hereby repealed.

(2) Notwithstanding such repeal--

- (a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;
 - (b) all notifications published, proclamations issued, powers conferred, forms provided by rules, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the said Code and which are in force immediately before the commencement of this Sanhita, shall be deemed, respectively, to have been published, issued, conferred, specified, defined, passed or made under the corresponding provisions of this Sanhita;
 - (c) any sanction accorded or consent given under the said Code in pursuance of which no proceeding was commenced under that Code, shall be deemed to have been accorded or given under the corresponding provisions of this Sanhita and proceedings may be commenced under this Sanhita in pursuance of such sanction or consent.
- (3) Where the period specified for an application or other proceeding under the said Code had expired on or before the commencement of this Sanhita, nothing in this Sanhita shall be construed as enabling any such application to be made or proceeding to be commenced under this Sanhita by reason only of the fact that a longer period therefor is specified by this Sanhita or provisions are made in this Sanhita for the extension of time."

27. It is trite that in the absence of a contrary intent, express or implied, amendments affecting procedures are presumed to be retrospective. A party to a prosecution has no vested right in



procedural provisions. Section 531 of the Sanhita has saved the application of the Code in respect of an appeal, application, trial, enquiry or investigation pending on the date on which the Sanhita came into force.

28. In **Abdul Khader v. State of Kerala (2024 (5) KHC 1 = 2024 (4) KLT 516)** while interpreting the frame of Section 531 this Court held thus:-

"18.What emerges from the above in the context of this case is that,-

1. An appeal filed on or after 01.07.2024 shall be governed by the procedure provided under the BNSS and not by the provisions of the Code of 1973.
2. Whether the judgment of conviction was before or after 01.07.2024, if the appeal is filed on or after 01.07.2024, the same can be filed following the procedure contained in the provisions of the BNSS.
3. All applications filed and steps taken in the appeals filed prior to 01.07.2024 shall be under the provisions of the Code of 1973.
4. When an appeal/application is represented after curing the filing defects its date of filing shall relate back to the date of its first presentation....."

29. Following the principles enunciated above, all applications filed and steps taken in a pending proceeding prior to 1.7.2024 shall be under the provisions of the Code of Criminal Procedure, 1973. As I discussed above, Chapter XXVII of the



Sanhita has given wider protection to a person of unsound mind or a person suffering from intellectual disability. Where two persons suffering from a mental disability or intellectual disability are dealt with differently, one under the Code, and the other under the Sanhita, it amounts to a violation of Article 14 of the Constitution. Among equals, the law should be equal and equally administered and should be treated alike. The guarantee of 'equal protection' under Article 14 is a guarantee of equal treatment of persons in 'equal circumstances'. To preserve the fundamental right of an individual, the provisions of the Sanhita can be extended retrospectively to any proceedings initiated prior to 1.7.2024. The saving provision under Section 531 of the Sanhita shall not deter the enforcement of the fundamental right of an accused. Issue No.2 is answered as above.

The present case

30. Annexure A3 report reveals that the petitioner is suffering from severe dementia, and the chances of recovery are less. The petitioner is aged 74 years. The report states that the petitioner's soundness of mind is to be assessed in detail by a psychiatrist. The learned Special Judge has taken the stand that if the party requires it, he should be subjected to an examination by a psychiatrist. The learned Special Judge lost sight of the principle that he has an onerous responsibility to try the issue as to whether



the petitioner has any mental disability. The order impugned is patently illegal and irregular. The impugned order, therefore, stands set aside. The learned Special Judge shall reconsider the application and proceed under Chapter XXVII of the Sanhita.

31. Before parting with this case, this Court places on record its appreciation to the learned Counsel Sri.V.Ramkumar Nambiar and Sri.Renjith B. Marar, for their valuable assistance as Amici Curiae.

The Crl.M.C. is disposed of as above.

Sd/-
K.BABU
Judge

TKS



APPENDIX OF CRL.MC 6370/2023

PETITIONER ANNEXURES

- Annexure A1** A TRUE COPY OF THE PETITION DATED 14.02.2023 IN CRL.M.P. NO 346/2023 IN C.C. NO. 33/2011 ON THE FILES OF THE COURT OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE, THRISSUR
- Annexure A2** A TRUE COPY OF THE ORDER DATED 13.03.2023 AND 21.03.2023 IN CRL.M.P. NO 346/2023 IN C.C. NO. 33/2011 ON THE FILES OF THE COURT OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE, THRISSUR
- Annexure A3** A TRUE COPY OF THE CERTIFICATE DATED 30.03.2023 ISSUED BY DR. BIJU, ASSOCIATE PROFESSOR AND HOD IN CHARGE, DEPARTMENT OF NEURO MEDICINE, MEDICAL COLLEGE, THRISSUR
- Annexure A3 (A)** A TRUE COPY OF THE COVERING LETTER DATED 30.03.2023 ISSUED BY SUPERINTEND IN FAVOUR OF THE COURT OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE, THRISSUR
- Annexure A4** FREE COPY OF THE ORDER DATED 20.07.2023 PASSED BY THE COURT OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE, THRISSUR IN C.C. NO. 33/2011

TKS