



2024:KER:66147

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 2ND DAY OF SEPTEMBER 2024 / 11TH BHADRA, 1946

CRL.RC NO. 2 OF 2024

**AGAINST THE ORDER/JUDGMENT DATED IN CC NO.1076 OF
2018 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
TRIPUNITHURA**

**As per order dated 29/02/2024 in Crl.Rev. Pet No. 1217
of 2023**

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031**
- 2 SANAL
KALATHIPARAMBIL HOUSE,
RAMAPURAM ERNAKULAM, PIN - 686576**
- 3 ROY
GANDHI NAGAR, KADAVANTHRA,
ERNAKULAM, PIN - 682020**
- 4 A SUJITH
CLERK, SUB REGISTRAR OFFICE,
TRIPUNITHURA, PIN - 682301**
- 5 K B SREEKUMAR
CLERK, SUB REGISTRAR OFFICE,
TRIPUNITHURA, PIN - 682301**
- 6 LALY JOSEPH
CC NO. 33-2346 B, GEETHANJALI ROAD,
VYTILLA P.O., ERNAKULAM, PIN - 682019**



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- 7 V J JOSEPH
CC NO. 33-2346 B, GEETHANJALI ROAD,
VYTILLA P.O., ERNAKULAM, PIN - 682019
- 8 P C SHAJI
AGED 50 YEARS
S/O CHINNAPPAN, PULIKKAL HOUSE,
NAYARAMBALAM, VYPIN, PIN - 682509
- M N SASI
AGED 64 YEARS
- 9 S/O. NEELAKANDAN, NANDANAM MARIPURATH HOUSE,
KANDANAD, UDAYAMPEROOR, MANAKUNNAM VILLAGE, PIN
- 682305
- 0 JOSE PAUL
AGED 52 YEARS
S/O. PAUL, THATHANATTU HOUSE, PALLIPARAMBU
KAVU, TRIPUNITHURA, NADAMA VILLAGE,
ERNAKULAM DISTRICT, PIN - 682301
- 11 JOSHY CHARLY
AGED 57 YEARS
S/O CHARLY, AGED 52/2018, PUTHENVEETIL HOUSE
(MARIYA BHAVAN), ANCHUMURI ROAD, THAMMANAM P O,
VYTTILA, POONITHURA VILLAGE., PIN - 682032

BY ADVS.

Sarin

M.R.SASITH(K/315/2002)

P.SANTHOSHKUMAR (KARUMKULAM)(K/784/1992)

PARVATHI KRISHNA(K/000807/2022)

SAUMYA.P.S(K/003383/2022)

THIS CRIMINAL REVISION CASE HAVING COME UP FOR
ADMISSION ON 02.09.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



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K.BABU, J.

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Dated this the 02th day of September, 2024

JUDGMENT

This Criminal Revision Case has been registered based on the directions of this Court in the order dated 20.02.2024 in Crl.Rev.Pet.No.1217 of 2023.

2. In the aforesaid Criminal Revision Petition, accused No.1 in Crime.No.987 of 2015 of Hill Palace Police Station, Ernakulam, challenged the order dismissing an application for discharge by the Trial Court. The accused in Crime.No.987 of 2015 are alleged to have committed offences punishable under Sections 120B, 406, 420, 424, 465, 468 & 471 read with Section 34 of IPC. This Court dismissed the revision petition.

3. While dismissing the revision petition, this Court noticed that the informant / victim was not given notice under Section 157 (2) of the Cr.P.C



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regarding the fact that some of the accused were deleted from the array of accused in the final report.

4. Relying on the law declared by the Supreme Court in ***Bhagwant Singh v. Commissioner of Police and another [(1985 KHC 6100]*** and ***Anil Kumar v. Latha Mohan and Others [(2021 (1) KHC 564)]***, holding that notice should have been given to the informant, this Court directed the Registration of the Criminal Revision Petition.

5. I have heard the learned Public Prosecutor and the learned counsel appearing for respondent No.10. Having regard to the nature of the order that I propose to pass, notice to the party respondents is dispensed with.

6. Initially, the Police arrayed nine persons as accused in the FIR. In the final report filed under Section 173(2) Cr.P.C, the Investigating Officer found that only five persons initially arraigned as accused in the FIR committed the offences alleged, and the other four



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persons originally arraigned were deleted from the array of accused. The investigating officer added one more person as the accused.

7. The learned Magistrate took cognizance of the offences.

8. It is submitted that the Investigating Officer should have notified the informant/victim of the fact that he would not investigate the case against the persons deleted from the array of accused and that no offences have been revealed against them. Section 157 of Cr.P.C. reads thus:

“157. Procedure for investigation:-

(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate



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empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

Provided that-

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on spot;

(b) if it appears to the officer in



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charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case:

[Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality]

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b) of the said proviso the officer shall also forthwith



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notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated."

9. As per Section 157(2) of Cr.P.C, if it appears to the Officer in Charge of a Police Station that there is no sufficient ground for entering into an investigation, he shall forthwith notify the said fact to the informant / victim.

10. In the present case, when the Investigating Officer submitted the report under Section 173(2) with the finding that there was no sufficient ground for entering on an investigation against some of the accused, the learned Magistrate ought to have issued notice to the informant /victim regarding the said finding. The declaration of law in this regard by the Supreme Court in ***Bhagwant Singh (Supra)*** mandates this. The Supreme Court held that in a case where the Magistrate



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to whom a report is forwarded under Section 173(2) decides not to take cognizance of the offence and to drop the proceedings or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the FIR, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. This Court in ***Anil Kumar (Supra)*** reiterated this principle.

11. In the present case, the learned Magistrate took cognizance of the offences only against five persons and decided not to proceed against four persons arraigned as accused in the FIR. Admittedly, no notice was served to the informant regarding the deletion of some of the accused from the array of accused. There is no justification for depriving the informant of the opportunity to be heard at the time when the report was considered by the Magistrate. Therefore, this Criminal Revision Case is allowed as below:-

- a. The learned Magistrate shall issue notice



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to the informant / victim regarding the finding of the Investigating Officer that there is no sufficient ground to proceed against some of the accused.

b. Thereafter, the learned Magistrate shall proceed further in accordance with law from the stage of taking cognizance.

Pending interim applications, if any, stand closed.

Sd/-

**K.BABU,
JUDGE**

Raj.



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APPENDIX OF CRL.RC 2/2024

PETITIONER ANNEXURES

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|-------------------|---|
| Annexure A | HIGH COURT ORDER DATED 20/02/2024 IN
CRL.REV. PET NO. 1217 OF 2023 |
| Annexure B | HIGH COURT ORDER DATED 29/02/2024 IN
CRL.REV. PET NO. 1217 OF 2023 |
| Annexure C | PROCEEDINGS DATED 02/08/2018 IN CC
1076/2018 OF JFCM COURT, TRIPUNITHURA |
| Annexure D | FINAL REPORT IN CRIME NO. 987/2015 OF
HILL PALACE POLICE STATION |
| Annexure E | ORDER DATED 28/02/2023 IN CMP NO.
210/2019 IN CC 1076/2018 OF JFCM
COURT, TRIPUNITHURA |
| Annexure F | FIR IN CRIME NO. 987/2015 OF HILL
PALACE POLICE STATION |