

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 5TH DAY OF JULY 2024 / 14TH ASHADHA, 1946

CRL.REV.PET NO. 613 OF 2024

CRIME NO.1202/2023 OF Kottarakkara Police Station, Kollam
AGAINST THE ORDER DATED 29.05.2024 IN CRMP.NO.949/2024 IN SC
NO.1275 OF 2023 OF ADDITIONAL DISTRICT COURT (ADHOC), KOLLAM

REVISION PETITIONER/ACCUSED:

SANDEEP G,
AGED 43 YEARS,
OCC - TEACHER, S/O. GOPINATHAN,
SREENILAYAM, ODANAVATTAM-VILLAGE KUDAVATOOR-MURI,
CHERURAKONAM-POST, KOTTARAKARA-TALUK KOLLAM-
DISTRICT, PIN - 695502.

BY ADVS.

BIJU ANTONY ALOOR
K.P.PRASANTH
HASEEB HASSAN.M
KRISHNASANKAR D.
REBIN VINCENT GRALAN
ATHUL M. JOSHEY

RESPONDENTS/COMPLAINANT:

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

2 DEPUTY SUPERINTENDENT OF POLICE
RURAL CRIME BRANCH (RCB/SHO)
KOTTARAKARA POLICE STATION,
KOLLAM-DISTRICT, PIN - 695502.

BY ADDL.DIRECTOR GENERAL OF PROSECUTION SHRI
GRASHIOUS KURIAKOSE
PUBLIC PROSECUTOR SHRI M.P.PRASANTH
SENIOR PUBLIC PROSECUTOR SRI C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 21.06.2024, THE COURT ON 05.07.2024 DELIVERED THE
FOLLOWING:

“C.R”

A. BADHARUDEEN, J.

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Crl.R.P No.613 of 2024-F
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Dated this the 5th day of July, 2024

ORDER

This Criminal Revision Petition has been filed under Section 397 r/w 401 of the Code of Criminal Procedure (‘Cr.P.C’ for short) by the accused in S.C.No.1275/2023 pending before the First Additional Sessions Court, Kollam. He assails the order in Crl.M.P.No.949/2024 dated 29.05.2024 in the said case, whereby the learned Additional Sessions Judge dismissed an application filed under Section 227 of Cr.P.C, seeking discharge.

2. Heard the learned counsel for the petitioner/accused and the learned Additional Director General of Prosecution in detail.

Perused the impugned order, the records placed by the learned counsel for the accused and the case diary as a whole, placed by the learned Additional Director General of Prosecution.

3. The prosecution case is that the accused who got absolved in a peculiar mental condition due to excess consumption of alcohol, called the police control room of Pooyappally Police Station at 3.45 a.m on 10.05.2023. In response to this call, witnesses Nos.3, 10 and 11 reached the house of witness No.13 and found injuries on the body of the accused and decided to give him medical aid. Since the accused hesitated to enter into the jeep, the second witness pressurised him to enter into the jeep and the accused carried a stick during this time. Witness No.2 forcefully removed the same and thereafter the accused was taken to Taluk Hospital, Kottarakkara, at 4.40 a.m along with witnesses Nos.12 and 2. Witness No.1 examined the accused and taken him to the procedure room at casualty waiting area. Then the accused kicked on the chest of

witness No.12 stating that he was not given the required priority. Later, the accused videographed the events while he was given medical aid by witness No.1 and Dr.Vandana Das, and shared the same through WhatsApp. Later, witness No.9 dressed his wound. At this juncture, the accused tactically took a surgical scissors from the said room and kept the same hidden in his right hand. Then he stabbed on the neck of witness No.2 and caused injury to him with intention to do away witness No.2. Since witness No.3 interfered, fatality to witness No.2 was avoided. Infuriated by the same, the accused caused stab injury to witness No.3 and when witness No.2 attempted to save witness No.3, the accused caused stab injury on the chest of witness No.2. When witness No.3 tried to escape, the accused followed him through the waiting area of the casualty and caused repeated stab injuries. When witness No.5 attempted to rescue himself, the accused caused stab injury on the left hand muscle portion of witness No.5. When witness No.11 attempted to save witness No.5, the

accused attempted to stab witness No.11. Later witnesses Nos.11 and 12 strongly resisted the accused and thereby witness No.5 was saved from fatality. Then he attacked witness No.4, who was on aid post duty at the hospital, near the O.P counter and caused stab injuries on his head. Since the accused created a horrible scene by attacking all, the injured persons and other staff saved themselves in their respective rooms. At this juncture, Dr.Vandana Das reached at the observation room after informing the same to witness No.49. Then the accused, with intention to cause death of Dr.Vandana Das, wrongly restrained her and stabbed her repeatedly to ensure her death. Though medical aid was given to Dr.Vandana Das, she died at 8.25 p.m. There is allegation that the accused obstructed the official duties of the hospital staff and threatened them. Causing disappearance of evidence is the other allegation against the accused. On this substratum, the prosecution alleges commission of offences punishable under Section 341, 323, 324, 332,

333, 353, 506(ii), 307, 302 and 201 of the Indian Penal Code ('IPC' for short hereafter).

4. While assailing the order impugned whereby the learned Additional Sessions Judge refused the relief seeking discharge, the learned counsel for the accused fervently argued that as discernible from the prosecution records the accused sought assistance of the police to avail treatment for his infirmities on the legs and when the accused was taken to the hospital he did not have any intention to cause any harm to anybody. But when he noted that there was reluctance for giving timely treatment for the infirmities, he got suddenly provoked and done certain overt acts which resulted in the death of Dr.Vandana Das and injuries to others, as per the prosecution allegations. Therefore, it is argued that the accused had no intention to murder anybody in the facts of the case though his alleged overt acts, if any, generated as the outcome of grave and sudden provocation, resulted in the death of Dr.Vandana Das.

5. In this connection, the learned counsel for the accused read out exception (1) to Section 300 of the Indian Penal Code ('IPC' hereafter for short) contending that culpable homicide is not a murder, if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person, who gave the provocation or causes the death of any other person by mistake or accident, the offence is one either under Section 304 part I or part II of the IPC, based on the facts and evidence. In order to buttress this contention, the learned counsel read out paragraphs 15 to 17 of the decision of the Apex Court reported in [AIR 2016 SC 4299 : AIR 2016 SC (Criminal) 1342] : (2016) 4 CURCRIR 8 : (2017) 98 ALLCRIC 347], **Govindaswamy v. State of Kerala**, where the Apex Court considered a case where the accused alleged to have committed murder punishable under Sections 376 and 302 of IPC. According to the learned counsel for the petitioner, it was observed by the Apex Court that in order to

hold the accused liable under Section 302 of IPC what is required is, the intention to cause death or knowledge that the act of the accused would be likely to cause death. In the said case, the prosecution allegation was that the accused attempted to commit rape on the victim and placed her in a supine position to accomplish the said goal and when the victim resisted, he caused 2 injuries. In the said case, the Apex Court held that the intention of the accused was to keep the deceased in a supine position for the purpose of sexual assault and, therefore, the requisite knowledge that in the circumstances, such an act would cause death, could not be attributed to the accused.

6. It is argued by the learned counsel for the accused with reference to paragraph 5 of the judgment in W.P(Crl).No.641/2023 (***K.G.Mohandas & anr. v. Central Bureau of Investigation & Ors.*** (hereinafter will be referred as '***K.G.Mohandas***' case (*supra*), that the said Writ Petition was filed by the father and mother of

Dr.Vandana Das, seeking C.B.I investigation. In paragraph 6, the learned counsel for the petitioners in the Writ Petition argued that there were several anomalies in the investigation and there were accusations against police personnel also. Therefore, in order to ensure a fair and unbiased investigation, an independent agency was to be entrusted with the investigation. Therefore, the parents of Dr.Vandana Das also were not convinced of the investigation attributing the offence of murder against the accused herein and according to them, the police, who were present at the hospital, are guilty of cowardice and the present investigation did not reach the issues relating to their inaction or omission. In paragraph 6 of the ***K.G.Mohandas'*** case (*supra*), this Court observed as under:

*“6. Sri. P. Vijayabhanu, the learned Senior Counsel, contended that there were several anomalies in the investigation, which required a detailed probe by an independent agency like the CBI. Relying upon the decisions in **R.S Sodhi, Advocate v. State of U.P and Others [(2010) 2 SCC 200]**, it was submitted that when the accusations are against the*

police personnel, to ensure that a fair and unbiased investigation takes place, it is necessary that an independent agency is entrusted with the investigation. The learned Senior Counsel also submitted that the police who were there at the hospital were guilty of cowardice, and the present investigation had not brought out any of the issues relating to the inaction or omission of the police personnel who were present at the scene and at the time of occurrence.”

Ultimately, the learned Single Judge of this Court dismissed the petition seeking CBI investigation on the ground that no specific reason pointed out to doubt the integrity or credibility of the investigation. Therefore, there was no reason to interfere with the investigation already conducted or to transfer it to the CBI.

7. The learned counsel for the accused relied on the decision reported in [1978 ICO 109 : AIR 1979 SC 366 : (1979) 3 SCC 4 : 1979 SCC (Cri) 609 : 1979 CriLJ 154 : (1979) 2 SCR 229], ***Union of India v. Prafulla Kumar Samal & anr.*** wherein the Apex Court in paragraphs 7 and 8 held as under:

“7. Section 227 of the Code runs thus:-

'If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.'

The words 'not sufficient ground for proceeding against the accused' clearly show that the Judge is not a mere post-office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.

8. *The scope of Section 227 of the Code was considered by a recent decision of this Court in the case of State*

of Bihar v. Ramesh Singh, (1978) 1 SCR 257 : (AIR 1977 SC 2018) where Untwalia J. speaking for the Court observed as follows (at p. 2019):-

"Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stages is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial."

This Court has thus held that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Sessions Judge in order

to frame a charge against the accused. Even under the Code of 1898 this Court has held that a committing Magistrate had ample powers to weigh the evidence for the limited purpose of finding out whether or not a case of commitment to the Sessions Judge has been made out.”

8. Resisting this contention, the learned Additional Director General of Prosecution specifically pointed out that in order to attract an offence punishable under Section 302 of IPC, the ingredients provided under Section 300 of IPC are sufficient, subject to exceptions (1) to (5) provided therein. The learned Additional Director General of Prosecution read out Section 300 of IPC with reference to the clause 'thirdly', which provides that if the act is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, unless the same would not fall under exceptions 1 to 5. Accordingly it is argued that the prosecution records would justify, *prima facie*, commission of offences so as to frame charge for the said offences by invoking

the power under Section 228 of Cr.P.C. Therefore, the Additional Sessions Judge rightly negated the contention raised by the accused seeking discharge by resorting to Section 227 of Cr.P.C. Thus the order only to be confirmed.

9. In *Govindaswamy v. State of Kerala* 's case (*supra*), the Apex Court considered injuries 1 and 2 alleged to be caused by the accused therein, where according to the prosecution, the accused caused two injuries on the victim therein and the Apex Court taken an exception on the finding that when the accused placed the victim in a supine position with intention to do sexual assault to her and on resistance when he caused two injuries to the victim, the requisite knowledge that in the circumstances such an act might cause death would not attribute to the accused. But the facts of the case dealt in *Govindaswamy v. State of Kerala* 's case (*supra*) is totally different from the facts of the case dealt herein and therefore, the finding therein, on a totally different facts, has no

application in the present case.

10. In paragraph 8 of *Prafulla Kumar Samal's* case (*supra*), after referring an earlier decision of the Apex Court in *State of Bihar v. Ramesh Singh* [(1978) 1 S.C.R 287], the Apex Court held that whereas strong suspicion may not take the place of the proof at the trial stage yet it may be sufficient for the satisfaction of this Sessions Judge in order to frame a charge against the accused.

11. Adverting to the rival arguments, it is relevant to refer the legal position regarding the essentials to frame charge in a Sessions trial and on what circumstances the accused is liable to be discharged with the aid of Section 227 of Cr.P.C.

12. As per Section 227 of Cr.P.C, if upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground

for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. Section 228(1)(b) deals with framing of charge and it has been provided that if after such consideration and hearing under Section 227, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which is exclusively triable by the court, he shall frame charge in writing against the accused. Section 228(1) (a) deals with another situation when the court finds that the offences is not exclusively triable by the court of Session.

13. The learned counsel for the petitioner relied on the following decisions on this point: *Union of India v. Prafulla Kumar Samal* [(1979) 3 SCC 4]; *State of Orissa v. Debendra Nath Padhi* [2005 (1) SCC 568]; *Onkar Nath Mishra & Ors. v. State (NCT of Delhi) & anr.* [2008(2) SCC 561]; *Joseph v. Kurian* [AIR ONLINE 2021 Kerala 186].

14. In a recent judgment viz. *State of Gujarat v. Dilipsinh*

Kishorsinh Rao, [2023 INSC 894 : AIR Online 2023 SC 865)14], the Apex Court meted out the essentials while framing charge and held as follows:

'7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then

necessarily charge has to be framed.

8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.

9. If the accused is able to demonstrate from the charge-sheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr.P.C. is to assist the court to determine whether it is required to proceed to conduct the trial. Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the I.O.

10. It is settled principle of law that at the stage of considering an application for discharge the court must

proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. ...

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11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 Cr. P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 : (AIR 1996 SC 1744) and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 : (AIR 2000 SC 2583) has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also

held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial. “

15. In the decision reported in [2023 KHC OnLine 1006 : 2023 KHC 1006 : 2023 (7) KHC SN 18 : 2023 INSC 1026 : 2023 LiveLaw (SC) 1019 : 2023 SCC OnLine SC 1582 : 2023 KLT OnLine 2015 : AIR 2024 SC 90], ***Vishnu Kumar Shukla v. State of Uttar Pradesh***, also the Apex Court reiterated the same.

16. The legal position as regards to the matters to be considered within the mandate of Sections 227 and 228 of I.P.C is not in dispute, as argued by the learned counsel for the petitioner, with reference to the decisions he has placed. In ***State of Gujarat v. Dilipsinh Kishorsinh Rao***'s case (*supra*) and ***Vishnu Kumar Shukla v. State of Uttar Pradesh***'s case (*supra*), also the Apex Court stated the principles. Epitomising the parameters that would

govern, when plea of discharge under Section 227 of Cr.P.C and framing of charge under Section 228 of Cr.P.C are to be addressed, the same are as under:

(i) Matters to be considered at the time of considering discharge and while framing charge are not aimless etiquette. Concomitantly the same are not scrupulous exertion. Keeping an equilibrium in between aimless etiquette and scrupulous exertion, the trial judge need to merely examine the materials placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on the basis of police charge/final report. The trial Judge shall look into the materials collected by the investigating agency produced before the Court, to see, *prima facie*, whether those materials would induce suspicious circumstances against the accused, so as to frame a charge and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged. But if the court

is of the opinion, after such consideration of the materials there are grounds for presuming that accused has committed the offence/s which is/are triable, then necessarily charge shall be framed.

(ii) The trial Judge has to apply his judicial mind to the facts of the case, with reference to the materials produced by the prosecution, as may be necessary, to determine whether a case has been made out by the prosecution for trial on the basis of charge/final report.

(iii) Once the accused is able to demonstrate from the materials form part of the charge/final report at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at this stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr.P.C. is to assist the court to determine whether it is required to proceed to conduct the trial.

(iv) At the stage of considering an application for discharge the court must proceed on an assumption that the materials which have

been brought on record by the prosecution are true and evaluate said materials, in order to determine whether the facts emerging from the materials taken on its face value, disclose the existence of the ingredients necessary of the offence/s alleged.

(v) The defence of the accused not to be looked into at the stage when the accused seeks discharge. The expression "the record of the case" used in Section 227 Cr. P.C. is to be understood as the documents and objects, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the prosecution.

(vi) The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record shall not be evaluated.

(vii) At the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative

value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.

(viii) In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which are really the function of the trial Judge, after the trial. At the stage of Section 227, the Judge has merely to sift the prosecution materials in order to find out whether or not there are sufficient grounds to proceed with trial of the accused.

(ix) Strong suspicion in favour of the accused, cannot take the place of proof of his guilt at the conclusion of the trial. But at the time of framing charge, if there is suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. In such case also charge needs to be framed to permit the prosecution to adduce evidence.

(x) If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is

challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

17. Applying the principles as enunciated above, no doubt, the court has power to discharge an accused, if the entire materials produced by the prosecution do not disclose, *prima facie*, materials to frame charge, and to proceed with trial. Except in the said circumstances, it is possible for the court to frame charge based on the materials and to proceed with trial.

18. Here the prosecution case is that accused who got absolved in a peculiar mental condition due to excess consumption of alcohol, called the police control room, of Pooyappally Police Station at 3.45 a.m on 10.05.2023. In response to this call, witnesses Nos.3, 10 and 11 reached the house of witness No.13 and found injuries on the body of the accused. Since the accused hesitated to enter into the jeep, the second witness pressurised him

to enter into the jeep and the accused carried a stick during this time. Witness No.2 forcefully removed the same and thereafter the petitioner was taken to Taluk Hospital, Kottarakkara, at 4.40 a.m along with witnesses Nos.12 and 2. Witness No.1 examined the accused and taken him to the procedure room at casualty waiting area. Then the accused kicked on the chest of witness No.12 stating that he was not given the required priority. Later, the accused videographed the events while he was given medical aid by witness No.1 and Dr.Vandana Das and shared the same through WhatsApp. Later, witness No.9 dressed his wound. At this juncture, the accused took a surgical scissors and kept the same hidden in his right hand. Then he stabbed on the neck of witness No.2 and caused injury to him with intention to do away witness No.2. Since witness No.3 interfered, fatality to witness No.2 was avoided. Infuriated by the same, the accused caused stab injury to witness No.3 and when witness No.2 attempted to save witness

No.3 and the accused caused stab injury on the chest of witness No.2. When witness No.3 tried to escape, the accused followed him through the waiting area of the casualty and caused repeated stab injuries. When witness No.5 attempted to rescue himself, the accused caused stab injury on the left hand muscle portion of witness No.5. When witness No.11 attempted to save witness No.5, the accused attempted to stab witness No.11. Later witnesses Nos.11 and 12 strongly resisted the accused and thereby witness No.5 was saved from the injury. Then the accused attacked witness No.4, who was at the aid post duty at the hospital near the O.P counter and caused stab injuries on his head. Since the accused created a horrible scene by attacking all, the injured persons and other staff saved themselves in their respective rooms. At this juncture, Dr.Vandana Das, who reached at the observation room after informing the same to witness No.49, the accused, with intention to cause death of Dr.Vandana Das, wrongly restrained her

and stabbed her repeatedly to ensure her death. Though medical aid was given to Dr.Vandana Das, she died at 8.25 p.m.

19. In this matter, I have gone through the statements of the crucial witnesses, who supported the prosecution allegations, the final report and also gone through the postmortem certificate as that of Dr.Vandana Das. Going by the statements of the witnesses, it is emphatically clear that the witnesses given statements in support of the prosecution allegations and detailing the overt acts alleged against the accused. In the postmortem certificate, 26 antemortem injuries were noted by the Doctor and it was opined that 13th, 14th, 15th and 17th antemortem penetrating injuries caused the death of Dr.Vandana Das, and they are as under:

“13. Incised penetrating wound 1.2X0.1 to 0.5cm, oblique on left side of back of chest, its upper sharply cut inner end was 1.5cm outer to midline and 4cm below the root of neck, the other end was blunt, upper margin was clear, and the lower margin was irregular and was seen penetrated into the left chest cavity by cutting through the muscles of the first

intercostal space, pierced the upper part of upper lobe of the left lung and terminated there. The wound was directed downwards and forwards for a total minimum dept of 5.5cm.

14. Incised penetrating wound 1.4X0.1 to 0.5cm, oblique on left side of back of chest, its upper inner end was 1.5cm outer to midline and 12.2cm below the root of neck. Its upper outer margin showed a side cut 0.1X0.1cm and the lower inner margin showed a skin tag 0.1X0.1 cm projecting into the wound. The chest cavity was seen penetrated through the muscles of 6th intercostal space and pierced the outer surface of left lung and terminated there. The wound was directed downwards and forwards for a total minimum depth of 6cm.

15. Incised penetrating wound 1.2X0.5cm, oblique on left side of back of chest, its lower end was blunt, with side cut 0.1X0.1cm of the lower inner margin 0.6cm away from the upper sharp end which was 4.8cm outer to midline and 19.9cm below root of neck and was seen penetrated the chest cavity by cutting through the muscles of 7th intercostal space, pierced the back surface of lower lobe of left lung and terminated there. The wound was directed upwards and forwards for a total minimum depth of 6.5cm.

17. Two incised wounds 1.1X0.4cm and 1.2X0.5cm, seen side by side 0.5cm apart and obliquely placed over an area 2X2cm on right side of back of chest. The inner injury

was 2.5cm outer to injury. Upper end of the inner injury and lower end of the outer injury were blunt. Inner margin of the inner injury showed side cut 0.2X0.1cm and skin tag 0.2X0.1cm on the outer margin at its middle. The inner injury seen penetrated through the muscles of the 5th intercostal space pierced the back aspect of upper part of lower lobe of right lung and terminated there. The wound was directed forwards, inwards and downwards for a total minimum depth of 5.5cm. Chest cavity contained 300ml fluid blood. The lung was collapsed.”

20. It is true that as per Section 300 IPC ‘Thirdly’, except in the cases covered by exceptions 1 to 5, if the act is so that the intention of causing bodily injury of any person and bodily injury intended to be inflicted are sufficient in the ordinary course of nature to cause death or murder under Section 300, punishable under Section 302 of IPC. Similarly culpable homicide would not amount to murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any

other person by mistake or accident.

21. In the instant case, though the accused reached the hospital after calling police personnel by himself and police personnel taken him to the hospital for giving medical aid, he attacked the hospital officials on the supposition that he was not given due care by the hospital officials and thereby he attacked many persons as discussed herein above. After a while, because of the unruly behaviour of the petitioner and his state of mind to attack anybody with intention to cause fatality to them, almost all found shelter in their respective abodes. Dr.Vandana Das, an innocent young Doctor, who did not notice or did not expect any threat at the hands of the accused at the procedure room, when reached the procedure room, the accused subjected her to repeated stabbing and the same resulted in 26 injuries, as noted in the postmortem certificate. Thus in the instant case, on no stretch of imagination, at this stage, this Court could find that the accused

had not done the acts with the intention of causing such bodily injury so as to cause death of Dr.Vandana Das. Otherwise the knowledge of the accused that the injuries were sufficient to cause death of the person, to whom the injuries were inflicted is, *prima facie*, established warranting framing of charge. No doubt, these are aspects to be considered by the trial court after adducing and evaluating evidence. Grave and sudden provocation, due to deprivation of power of self control sometimes may lead to some overt acts, but there must be a quietus for grave and sudden provocation. It could not be said that grave and sudden provocation, a particular mental state, would continue for hours. Long lasting provocation, either mild or grave, could not be construed as sudden provocation. Long lasting provocation carries an element of special *mens rea* or the very intention to commit the crime. Here the accused started to attack everybody repeatedly after taking the scissors kept at the procedure room and keeping the

same hidden, though many of them saved from fatality, ultimately, Dr.Vandana succumbed to the injuries allegedly caused by the accused. In such a case, at the stage of framing charge, no court would find that the accused done the overt acts due to grave and sudden provocation so as to consider the case as one in lesser form of murder, that is, culpable homicide not amounting to murder. On evaluation of the prosecution materials, the same would, *prima facie*, substantiate framing of charge for the offences alleged by the prosecution, and, therefore, the impugned order disallowing discharge is perfectly justified and the same would not require any interference, by exercising the power of revision.

22. In the result, this Revision Petition stands dismissed.

23. It is specifically made clear that the observations made in this order are for the purpose of deciding this Revision Petition alone and the same have no binding effect when considering the case on evidence and the trial court shall proceed with trial and

decide the case on the basis of the evidence to be adduced, unbridled by the observations herein.

Registry shall forward a copy of this order to the jurisdictional court for information and for further steps, forthwith.

Sd/-

(A.BADHARUDEEN, JUDGE)

rtr/

APPENDIX OF CRL.REV.PET 613/2024

PETITIONER' S ANNEXURES

Annexure A1 TRUE COPY OF THE ORDER IN CR.M.P
NO.949/2024 IN SC NO.1275/2023 OF ADDL.
SESSIONS JUDGE -I KOLLAM DATED
29/05/2024.

Annexure A2 TRUE COPY OF THE CHARGE SHEET DATED
01/08/2023.