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Crl.R.P No.1044 of 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

WEDNESDAY, THE 16TH DAY OF OCTOBER 2024 / 24TH ASWINA, 1946

CRL.REV.PET NO. 1044 OF 2024

CRIME NO.356/2016 OF PANANGAD POLICE STATION, ERNAKULAM

AGAINST THE ORDER/JUDGMENT DATED 27.08.2024 IN SC
NO.253 OF 2017 OF ADDITIONAL DISTRICT COURT & SESSIONS
COURT - VII, ERNAKULAM / III ADDITIONAL MACT, ERNAKULAM

REVISION PETITIONER/ACCUSED:

SOJITH,
AGED 33 YEARS,
S/O MOHANAN, CHETHIKAATUVELI (H),
KAYIPPURAM, MUHAMMA VILLAGE,
MUHAMMA P.O., ALAPPUZHA, PIN - 688525

BY ADVS.
C.V.MANUVILSAN
O.A.ANJU
HARKISHAN K.P.
SURABHI R.
NAEEM IBRAHIM(K/374-P/2000)
VRINDA LAKSHMANAN(K/001663/2023)

RESPONDENTS/STATE:

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



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2 STATION HOUSE OFFICER,
 REPRESENTED BY THE SUB INSPECTOR OF POLICE,
 PANANGADU POLICE STATION,
 ERNAKULAM, PIN - 682506

 BY ADV
 SRI.G.SUDHEER, PUBLIC PROSECUTOR.

 THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 16.10.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



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'C.R'

K.BABU, J.

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Dated this the 16th day of October, 2024

ORDER

The challenge in this revision at the instance of the accused is to the order framing a fresh charge by the Trial Court.

2. The Revision Petitioner is the accused in S.C No.253/2017 on the file of the Additional Sessions Court-VII, Ernakulam. He is alleged to have committed offence punishable under Section 20(b) (ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

3. The prosecution case is that on 09.03.2016 at about 3.50 p.m, the revision petitioner/accused was found in conscious possession of 1.137 Kgs of ganja near Kammoth Library.

4. The Panangad Police registered Crime No. No.353/2016. The Police completed the investigation and submitted the final



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report before the Sessions Court, Ernakulam, a Court notified under Sections 36 and 36A of the Act. The Sessions Court made over the case for trial and disposal to the Additional Sessions Court-VI, Ernakulam, which was not a Court notified under Sections 36 and 36A of the Act. That Court proceeded with the case and heard the prosecution and the accused under 227 Cr.PC. The accused filed an application seeking discharge. The Court dismissed the application and framed the charge against the accused under Section 20(b)(ii) (B) of the Act. The Sessions Court, Ernakulam, as per order No.16831/2021 dated 25.01.2022, transferred the case to the Additional Sessions Court-VII, which is a notified Court (the Trial Court).

5. The Trial Court proceeded with the trial. Witnesses were examined. The matter was heard under Section 232 Cr.PC. The accused was called upon to lead evidence, if any. After hearing the prosecution and the accused, the case was taken up for judgment.

6. On perusal of the records, the Trial Court found that the



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Court which framed the charge had no jurisdiction to try the case, and therefore, the Trial Court held that a fresh charge is to be framed against the accused.

7. I have heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

8. The learned counsel for the revision petitioner submitted that since the Court that framed the charge had no jurisdiction to try the case, the charge framed by it against the accused is a nullity, and therefore, the evidence recorded by the Trial Court cannot be acted upon. The learned counsel further submitted that the accused was not given the opportunity to seek discharge. The learned counsel also submitted that the Trial Court should have acquitted the accused under Section 232 Cr.PC, as there was no evidence in the eye of law. It is further submitted that with the framing of a fresh charge, the accused is compelled to face a fresh trial.

9. As per Section 36 of the Act, to provide speedy trial of the



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offences under the Act, the Government may constitute Special Courts for such area or areas as specified in the notification. A person shall not be qualified for appointment as a Judge of a Special Court unless he is, immediately before such appointment, a Sessions Judge or an Additional Sessions Judge. As per Section 36A of the Act, all offences under the Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed.

10. The Police submitted the final report before the Sessions Court, Ernakulam, which was notified as a Special Court having jurisdiction over the area in which the offence has been committed. The Sessions Court, Ernakulam, transferred the case to the Additional Sessions Court -VI, which is not a Court notified as above. The Additional Sessions Court-VI, which had no jurisdiction to try the offence under the Act, framed the charge against the accused. Thereafter, the Sessions Court, Ernakulam, transferred



the case to the Additional Sessions Court-VII (the Trial Court), a Special Court constituted for the area in which the offence has been committed.

11. Admittedly, the Court which framed the charge (Additional Sessions Court-VI) against the accused had no jurisdiction to try the offence alleged. A Special Court constituted under the Act recorded the evidence, and thereafter, on realising that a Court that was not notified under Sections 36 and 36A of the Act had framed the charge, decided to frame a new charge. Then, the Trial Court called upon the prosecution and the accused to lead evidence, if any, they propose.

12. The fundamental challenges of the revision petitioner are the following:

- (a) There was no valid charge as the Court that framed the charge was not a Special Court constituted to try the offence.
- (b) The Trial Court cannot act upon the evidence



recorded based on the said charge.

13. The charge was framed by a Sessions Court but not a Special Court constituted under the Act. The entire evidence was recorded by a Special Court under the Act (the Trial Court).

14. The first contention of the learned counsel for the revision petitioner is that there was no valid charge. The Trial Court, while deciding to frame a fresh charge, observed that the charge initially framed by the Sessions Court-VI cannot be considered as a charge.

15. The consequence of omission to frame or absence or error in charge is dealt with in Section 464 Cr.P.C, which reads thus:

“464. Effect of omission to frame, or absence of, or error in, charge.- (1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may -

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the



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framing of the charge;

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit;

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.”

16. Section 464 Cr.PC provides that a finding, sentence or order could be set aside only in those cases where the facts are such that no valid charge could be framed against the accused in respect of the facts proved. If the facts are such that a charge could be framed and yet it is not framed, but no failure of justice has in fact, been occasioned, thereby, the finding, sentence or order of the Court of competent jurisdiction is not to be set aside on that ground {Vide: **Kammari Brahmaiah v. Public Prosecutor, High Court of A.P. (AIR 1999 SC 775)**}.

17. The principles deducible from various precedents are:

- (i) The accused should not suffer any prejudice by reason of non-framing of charges.
- (ii) It should not result in failure of justice.

18. The paramount consideration is the dispensation of



justice, and nothing which would result in prejudice to the accused would or could be condoned {Vide: **Kantilal Chandulal Mehta v. State of Maharashtra (AIR 1970 SC 359)**}.

19. Even non-framing of charge would not vitiate a conviction when no prejudice has been pointed out by the accused.

20. The accused has no case that he was not aware of the allegations levelled against him. The accused even filed an application seeking discharge before that Court. Admittedly, the contents of the charge framed by the Court that had no jurisdiction and the fresh charge framed by the Trial court are the same.

21. The learned counsel for the revision petitioner submitted that he had pointed out to the Additional Sessions Court-VI, Ernakulam, that it had no jurisdiction to frame a charge.

22. It is important to note that the accused faced trial in the Trial Court (the competent Court having jurisdiction to try the case), knowing well that a Court having no jurisdiction to try the case had framed the charge. The accused did not mention this irregularity



while the Trial Court recorded the evidence. Without any objection, he participated in the trial. He never raised a case that he was prejudiced while participating in the trial based on a charge framed by a Court having no jurisdiction. He did not object to the framing of the new charge till the filing of this revision petition. As early as on 27.06.2024, the Trial court decided to frame a new charge, and after hearing both sides, framed the charge. The Court offered the opportunity to both sides to lead evidence, if any. There is nothing to show that the accused suffered any prejudice by reason of the framing of the charge by a Court that had no jurisdiction. No materials are there to show that it resulted in a failure of justice.

23. Even if the Trial Court had not framed any new charge, the defect that occurred could have been taken care of by the mandate of Section 465 Cr.PC. Even the absence of a charge by a Court will not vitiate the trial or the judgment to be delivered in this case.

24. The accused has failed to place any material to show that



he was prejudiced or any failure of justice occurred.

25. The second contention of the accused is that the Trial Court cannot act upon the evidence recorded by it as it was not based on a charge framed by a Court having jurisdiction to try the case.

26. The Trial Court which recorded the evidence is a Special Court constituted under the Act for the area where the offence has been committed. The accused has no case that he is prejudiced in any way. There is no failure of justice in the process of recording evidence. The accused has no case that he was in any way misled in defending the allegations levelled against him due to any error or omission. The framing of a charge by a Sessions Court having no jurisdiction to try the case will not in any way affect the evidence recorded by a Special Court constituted under the Act. The Trial Court can act upon the evidence recorded by it.

27. Both sides submitted that even after framing of a new charge the Trial Court provided opportunity to both sides to lead



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further evidence.

28. I find no irregularity or illegality in the procedure adopted by the Trial Court. There could not have been any illegality even if the Trial Court had not framed any new charge in view of the mandate of Section 464 Cr.PC. As an abundant caution, the Trial Court framed a new charge and called upon both sides to lead evidence. The order impugned does not require any interference.

The Criminal Revision Petition lacks merits, and it stands dismissed.

Sd/-
K.BABU,
JUDGE

KAS



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APPENDIX OF CRL.REV.PET 1044/2024

PETITIONER ANNEXURES

- Annexure A1** **A CERTIFIED COPY OF THE FIR AND FIS IN
CR. NO. 356/2016 OF PANANGAD POLICE
STATION**
- Annexure A2** **THE CERTIFIED COPY OF THE CHARGE IN CR.
NO. 356/2016 OF PANANGAD POLICE STATION
DATED 09.08.2021**
- Annexure A3** **A CERTIFIED COPY OF THE ORDER IN SC NO.
253 OF 2017 DATED 27.06.2024 BY THE
ADDITIONAL DISTRICT AND SESSIONS COURT,
ERNAKULAM NO. VII**