



2024:KER:55455

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

WEDNESDAY, THE 17<sup>TH</sup> DAY OF JULY 2024 / 26TH ASHADHA, 1946

CRL.REV.PET NO. 179 OF 2024

AGAINST THE ORDER DATED 16.12.2023 IN CMP NO.247 OF 2023 INSC  
NO.657 OF 2023 OF ASSISTANT SESSIONS COURT/SUB COURT/COMMERCIAL  
COURT, CHAVAKKAD

REVISION PETITIONER/ACCUSED:

LIBIN  
AGED 29 YEARS  
S/O BABY, RESIDING AT SRAMBIKKAL HOUSE, KUNNAMKULAM  
VILLAGE, KAKKAD DESOM, KUNNAMKULAM TALUK, THRISSUR  
DISTRICT, PIN - 680503.

BY ADVS.  
RAJIT  
V.V.JOY  
AJAIY BASKAR

RESPONDENTS/STATE/DE FACTO COMPLAINANT & INJURED:

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
PIN - 682031.
- 2 SUDHEESH DEEPU  
AGED 45 YEARS  
S/O KRISHNANKUTTY, RESIDING AT KANDAMPULLY HOUSE,  
CHIRAMANEGADU VILLAGE, MARATHAMKODU DESOM, KUNNAMKULAM  
TALUK, THRISSUR DISTRICT, PIN - 680604.
- 3 VIVEK  
AGED 35 YEARS  
S/O KRISHNAKUMAR, RESIDING AT PALAKKAPARAMBIL HOUSE,  
IYYAL VILLAGE, DESOM, KUNNAMKULAM TALUK, THRISSUR  
DISTRICT, PIN - 680604.
- 4 VINEESH  
AGED 34 YEARS  
S/O VIJAYAN, RESIDING AT MUTHIRAPARAMBATH HOUSE,  
CHIRAMANEGADU VILLAGE, MARATHAMKODE DESOM, KUNNAMKULAM  
TALUK, THRISSUR DISTRICT, PIN - 680604.



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**5 SASIKUMAR  
AGED 45 YEARS  
S/O NANU, RESIDING AT SANGAMANDHIR NEAR KAKKAD  
GANAPATHI TEMPLE, KUNNAMKULAM TALUK, THRISSUR DISTRICT,  
PIN - 680603.**

**BY ADVS.  
HEMANTH H.  
ARJUN S.(K/403/2020)**

**SRI.C N PRABHAKARAN,SR PP**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION  
ON 17.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**



## **JUDGMENT**

The challenge in this revision petition is to the order dated 16.12.2023 in CMP No.247 of 2023 in S.C No.657 of 2023 on the file of the Assistant Sessions Court, Chavakkad. The revision petitioner is the 9<sup>th</sup> accused in Crime No.12/2015 registered by Kunnankulam Police alleging offences punishable under Sections 143, 147, 148, 452, 323, 324, 427 and 307 r/w Section 149 of the IPC.

2. The investigating agency arrayed ten persons as accused. Two of them, juveniles, faced trial before the Juvenile Justice Board. The charge as against the other accused was submitted before the jurisdictional Magistrate. The learned Magistrate committed the case to the Sessions Court, which made over the case against accused Nos.1 to 4, 6, 7, 9 and 10 to the Assistant Sessions Court, Chavakkad. The case against accused Nos.9 and 10 was split up as they were unavailable for trial.

3. The Assistant Sessions Judge, after conducting the trial, acquitted accused Nos.1 to 4, 6 and 7.

4. After that, accused No.9, the petitioner herein, appeared before the trial court and filed an application seeking discharge under Section 239 Cr.P.C. The learned Assistant Sessions Judge dismissed the application as per the impugned



order.

5. The prosecution case:-

On 31.12.2014 at 12.45 p.m., all the accused, in prosecution of their common object, formed themselves into an unlawful assembly and committed rioting armed with deadly weapons like swords, iron pipe etc. and trespassed into the RSS office situated at Kakkad. Accused No.1 voluntarily caused hurt to one Sudheesh Deepu with a sword. Accused No.6 attacked him with an iron pipe. Accused No.7 kicked him on his chest. The other accused, including the petitioner, were also members of the unlawful assembly.

6. I have heard the learned counsel for the petitioner, the learned Public Prosecutor and the learned counsel appearing for the victims.

7. The learned counsel for the petitioner submitted that the learned Assistant Sessions Judge has not taken into account the relevant materials while considering the application filed under Section 239 Cr.P.C. The learned counsel submitted that the Trial Court should have taken into account the depositions of the witnesses who gave evidence in the trial against the other accused and the Judgment of acquittal in that case while appreciating whether a prima facie case is made out to proceed against the petitioner. The learned counsel relied on **Arunkumar v. State of**



**Kerala** [2004 (2) KLT 1039] to support his contention.

8. The learned counsel for the victims submitted that they have no grievance against the petitioner.

9. The learned Public Prosecutor submitted that at the time of framing charge, the Trial Court was not expected to conduct a mini trial.

10. The relevant portion of the impugned order reads us:-

“ 6. Heard both sides.

7. At the time of framing the charge what the court will have to look into is as to whether from the records of the case, there are sufficient materials on records to presume that the accused has committed the alleged offences. It cannot look into any other materials including the deposition of the previous case.

8. On going through the records, there are sufficient materials before this court to presume that the accused has committed offences punishable under u/ss 143, 147, 148, 452, 323, 324, 427, 307 r/w 149 of IPC. Hence, the petition stands dismissed.”

11. Section 239 envisages a careful and objective consideration whether the charge against the accused is groundless or whether there is ground for presuming that he has committed an offence. What Section 239 prescribes is not an empty or routine formality. It is a valuable provision to the advantage of the accused, and its breach is not permissible under the law. But, if the Judge, upon considering the record, including the examination,



if any, and the hearing, is of the opinion that there is "ground for presuming" that the accused has committed the offence triable under the chapter, he is required by Section 240 to frame in writing a charge against the accused. The order for the framing of the charge is of a far-reaching nature, and it amounts to a decision that the accused is not entitled to discharge.

12. The grievance of the learned counsel for the petitioner is that though the statements of the witnesses in the trial against the other accused and the Judgment of acquittal passed against the other accused were brought to the attention of the learned Assistant Sessions Court, it did not consider it while deciding the question whether the Court has to proceed further or not against the petitioner.

13. There can be no doubt that the stage of framing of the charges is an important stage, and the court, before framing the charge, has to apply its mind judicially to the evidence or the material placed before it in order to make up its mind whether there are sufficient grounds for proceeding against the accused. (Vide: **V.C.Shukla v. State through C.B.I.** (1980 SCC (Cri) 695),

14. The principles to be borne in mind while considering an application under Section 239 of the Code are the following:-

(1) The Judge, while considering the question of framing the charges under the Code, has the undoubted power to sift and



weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. (3) The test to determine whether there is a prima facie case would naturally depend upon the facts of each case, and it is difficult to lay down a rule of universal application.

(4) In exercising his jurisdiction under Sections 227 and 239 of the Code, the Judge cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This, however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. (5) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the Trial Judge will be empowered to discharge the accused, and at this stage, he is not to see whether the trial will end in conviction or acquittal. (Vide: **G.Sisupalan v. Deputy Superintendent of Police and Others** [MANU/KE/3482/2022]).

15. A Division Bench of this Court had considered a similar



question in **Arunkumar** (supra). In **Arunkumar** it was contended that the Court was obliged to consider the records produced by the Police under Section 173 Cr.P.C alone and the evidence and the Judgment, which formed part of the records after the framing of charge against the accused, who faced trial, cannot be looked into.

While considering this contention, the Division Bench held thus:-

“We are unable to subscribe to that view, because, while considering discharge under Section 239 Cr.P.C, apart from considering the police report and the documents sent to the Court under Section 173 Cr.P.C, the Court can make such examination, if any, of the accused as it thinks necessary, and has to give the prosecution and the accused an opportunity of being heard. Therefore, if such an examination is made, the accused can speak about the subsequent events, including the deposition of the witnesses and the judgment in respect of the accused persons, who faced trial. A hearing by a Court means hearing the oral arguments/submissions made by the incumbent to persuade the Court to grant him the relief sought for. During the hearing, naturally, he can refer to certain basic and relevant documents. Appreciation of oral argument, in such circumstances, shall include consideration of of the documents referred to for its consideration. Necessarily, in such a situation, as the accused will refer to the deposition of the witnesses who had been examined and the findings of the Court when the other accused faced trial, any Court hearing such arguments will necessarily, have to consider the points so urged, as well as the supporting documents. Thus, consideration by the Court does not confine to the documents sent with the police report under Section 173 Cr.P.C alone.”

(emphasis supplied)

16. It appears that the learned Assistant Sessions Judge has





not considered any of the materials relied on by the accused in support of his plea of discharge filed under Section 239 Cr.P.C. Therefore, the order dated 16.12.2023 in CMP No.247/2023 stands set aside. The learned Assistant Sessions Judge shall consider the application under Section 239 Cr.P.C afresh in the light of the above mentioned principles.

17. The learned counsel for the petitioner requested a direction to the Trial Court to exempt the personal appearance of the petitioner during the proceedings mentioned above. The presence of the petitioner before the Trial Court is dispensed with at the time of consideration of the application seeking discharge.

The Crl.Revision Petition stands allowed as above.

Sd/-

**K . BABU  
JUDGE**

Sru

**APPENDIX OF CRL.REV.PET 179/2024****PETITIONER'S ANNEXURES**

- Annexure 1** THE TRUE COPY OF THE FINAL REPORT IN S.C. NO. 318/2017 OF LEARNED ASSISTANT SESSIONS COURT, CHAVAKKAD, DATED 08.05.2015.
- Annexure 2** THE TRUE COPY OF THE JUDGMENT IN S.C. NO. 318/2017 OF LEARNED THE ASSISTANT SESSIONS COURT, CHAVAKKAD, DATED 30.11.2022.
- Annexure 3** A TRUE COPY OF THE DEPOSITION OF PW1 IN S.C. NO.318/2017 BEFORE THE LEARNED ASSISTANT SESSIONS COURT, CHAVAKKAD DATED 18.11.2022.
- Annexure 4** A TRUE COPY OF THE DEPOSITION OF PW2 IN S.C. NO.318/2017 BEFORE THE LEARNED ASSISTANT SESSIONS COURT, CHAVAKKAD 18.11.2022.
- Annexure 5** A TRUE COPY OF THE DEPOSITION OF PW3 IN S.C. NO.318/2017 BEFORE THE LEARNED ASSISTANT SESSIONS COURT, CHAVAKKAD DATED 18.11.2022.
- Annexure 6** A TRUE COPY OF THE DEPOSITION OF PW4 IN S.C. NO.318/2017 BEFORE THE LEARNED ASSISTANT SESSIONS COURT, CHAVAKKAD DATED 23.11.2022.
- Annexure 7** A TRUE COPY OF THE AFFIDAVIT DATED 18.11.2022 FILED BY THE 2ND RESPONDENT EVIDENCING THE FACT OF SETTLEMENT.
- Annexure 8** A TRUE COPY OF THE AFFIDAVIT DATED 18.11.2022 FILED BY THE 3RD RESPONDENT EVIDENCING THE FACT OF SETTLEMENT.
- Annexure 9** A TRUE COPY OF THE AFFIDAVIT DATED 18.11.2022 FILED BY THE 4TH RESPONDENT EVIDENCING THE FACT OF SETTLEMENT.
- Annexure 10** A TRUE COPY OF THE AFFIDAVIT DATED 18.11.2022 FILED BY THE 5TH RESPONDENT EVIDENCING THE FACT OF SETTLEMENT.
- Annexure 11** A TRUE COPY OF THE PROCEEDINGS AGAINST THE PETITIONER DOWNLOADED FROM THE E COURT SERVICE IN LP.NO 39/2022 OF THE SUB COURT CHAVAKKAD.



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**Annexure 12**

**CERTIFIED COPY OF THE ORDER PASSED BY THE  
HON'BLE ASSISTANT SESSIONS JUDGE, CHAVAKKAD  
DATED 16.12.2023.**