

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO(S). _____ /2024
(ARISING OUT OF SLP (CRL.) NO(S).11916-11919/2023)

K. CHERIYA KOYA

Appellant(s)

VERSUS

MOHAMMED NAZER M.P. & ORS. ETC.

Respondent(s)

O R D E R

HRISHIKESH ROY, J

1. Leave granted.
2. Heard Mr. C.U. Singh, learned Senior Counsel appearing for the appellant. The High Court of Kerala is represented by Mr. P.N. Ravindran, learned Senior Counsel. Mr. Raghenth Basant, learned Senior Counsel appears for respondent Nos. 1 and 3-15.
3. The challenge in these appeals is to the judgment and order passed on 23.12.2022 by the High Court of Kerala at Ernakulam in O.P. (Crl.) No.608/2022 and O.P. (Crl.) No.609/2022, filed under Article 227 of the Constitution. The appellant also challenges the order dated 21.06.2023 in the Review Petition Nos.94 and 97 of 2023 whereby both review petitions were dismissed by the learned Judge.
4. The matter pertains to discharge of judicial duties by the appellant, who served as Sub-Judge-cum-Chief Judicial Magistrate in the Union Territory of Lakshadweep. The two petitions under Article 227 of the Constitution were

instituted by the fifteen individuals accused in the CC No.24/2016. Of these, 11 accused were found guilty and subsequently convicted on 15.11.2022. In their petition before the High Court, the convicted persons alleged that the appellant, as the Judicial Magistrate, without examining the Investigating Officer (PW-7) and without affording any opportunity to the accused to cross-examine the witness, rendered the order of conviction.

5. The High Court dealt with the matter and ordered that the appellant be suspended by the Lakshadweep administration. Additionally, an inquiry was ordered to be conducted under Section 340 of the CrPC for the offence under Section 195 (1) (b) of the CrPC.

6. The learned Senior Counsel for the appellant argues that vide order dated 14.12.2022, the High Court had adjourned the proceedings to 05.01.2023, requisitioning the records from the Court of the CJM, Amini, Lakshadweep, in a sealed cover. The Court further directed the Investigating Officer to furnish an affidavit to the Judicial Officer. However, when the matter was next listed before the High Court on 23.12.2022, the Court passed orders directing the Lakshadweep administration to place the appellant herein (additional 3rd respondent before the High Court), under suspension and ordered a detailed inquiry on his conduct as a Judicial Officer. Aggrieved, the appellant preferred two review petitions, which were partly allowed under the order dated 21.06.2023, substituting the

Kerala High Court as the Disciplinary Authority.

7. The learned Senior Counsel for the appellant, as a preliminary submission, contends that despite the requisition of records from the Court of the CJM, (which was presided over by the appellant), were received only at a subsequent stage. Nevertheless, the High Court proceeded to adjudicate the matter and passed the impugned order on 23.12.2022. Counsel further contends that the appellant's counsel was not afforded an opportunity to advance submission before the High Court as the counsel's name was not reflected in the Cause List.

8. On 14.12.2022 the learned Judge passed the following order:-

"Heard.

Posted for orders.

The Registry will inform the Chief Judicial Magistrate, Amini, Lakshadweep to forward the entire files in C.C No.24/2016 in a sealed cover, to this Court forthwith.

The learned Standing counsel appearing for the 1st respondent will give a copy of the affidavit filed by PW7 to the counsel appearing for the additional 3rd respondent."

9. The appellant, who was then serving as the Chief Judicial Magistrate and was arrayed as an additional 3rd respondent in his personal capacity, filed a counter affidavit on 14.12.2022 before the High Court. A scrutiny of the case status of CrI. OP No. 608 of 2022, as reflected on the High Court's official website, indicates that the matter was initially adjourned on 14.12.2022, with the tentative next date of hearing set as 05.01.2023. However, the matter was listed much earlier on 23.12.2022, when the impugned order was pronounced. While the

early listing of the case does not, per se, render the procedure inherently flawed, it is imperative to highlight that the order dated 14.12.2022 does not record the specific date to which the matter stood adjourned, nor does it reflect 05.01.2023 as the next scheduled hearing.

10. Moreover, paragraph 11 of the impugned order dated 23.12.2022 categorically records that the learned counsel, Shri P. Sanjay, who appeared on behalf of the additional 3rd respondent (i.e., the appellant herein) was heard before the matter was adjudicated. The said counsel also represented the review petitioner, i.e., the appellant herein, in subsequent review petitions and whose appearance has been noted in the orders passed therein. Thus, the contention regarding lack of opportunity to present submissions appears to be incorrect.

11. Let us now advert to the affidavit filed by the Registrar General of the High Court of Kerala in pursuant to this Court's order dated 26.07.2024. In Paragraph 12 of the said affidavit, the following is stated:-

"12. As per the direction in the order dtd.14-12-2022, entire files in C.C.No.24/2016 were called for from the Chief Judicial Magistrate Court, Amini, Lakshadweep on 15-12-2022 by speed post. The sealed cover containing records was received in the High Court on 26.12.2022."

12. As can be seen from above, the record from the Court of the CJM, Amini was received in the High Court's only on 26.12.2022, whereas the High Court judgment was rendered prior to such receipt, on 23.12.2022. The adjudication of the matter on 23.12.2022, in the absence of the complete records being reviewed, would render the said order dated 23.12.2022 legally

invalid and is liable to be set aside.

13. The disciplinary proceedings against the appellant have been initiated on the basis of the said legally invalid order. We are however informed that the proceedings under Section 340 of the CrPC have since been dropped by the order dated 01.03.2024.

14. In the above circumstances, we are of the considered view that the order(s) passed by the High Court on 23.12.2022 and 21.06.2023 in the O.P. (Crl.) No.608/2022 and O.P. (Crl.) No.609/2022 and the Review Petition Nos.94 and 97 of 2023 deserve to be set aside and quashed. It is ordered so accordingly. The consequences shall follow.

15. Following the above interference, the O.P. (Crl.) No.608/2022 and O.P. (Crl.) No.609/2022 are restored to their original numbers. The learned Chief Justice of the High Court of Kerala will issue required orders for early hearing of the two restored petitions.

16. With the above order, the appeals are allowed. Pending application(s), if any, stand closed.

.....J.
[HRISHIKESH ROY]

.....J.
[S.V.N. BHATTI]

NEW DELHI;
SEPTEMBER 23, 2024

ITEM NO.23

COURT NO.5

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 11916-11919/2023

(Arising out of impugned final judgment and order dated 23-12-2022 in OPCRL No. 608/2022 23-12-2022 in OPCRL No. 609/2022 21-06-2023 in RP No. 94/2023 21-06-2023 in RP No. 97/2023 passed by the High Court Of Kerala At Ernakulam)

K. CHERIYA KOYA

Petitioner(s)

VERSUS

MOHAMMED NAZER M.P. & ORS. ETC.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.177852/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.182195/2023-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 23-09-2024 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE S.V.N. BHATTI

For Petitioner(s)

Mr. C.U. Singh, Sr. Adv.
Mr. E. M. S. Anam, AOR

For Respondent(s)

Mr. Raghenth Basant, Sr. Adv.
Mr. Bijo Mathew Joy, AOR

Mr. P.N. Ravindran, Sr. Adv.
Mr. T. G. Narayanan Nair, AOR
Ms. Samyuktha H Nair, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

Pending application(s), if any, stand closed.

[DEEPAK JOSHI]
ASTT. REGISTRAR-cum-PS

[KAMLESH RAWAT]
ASSISTANT REGISTRAR

(Signed Order is placed on the File)