

HIGH COURT OF KERALA

Bench: Justice P.V. Kunhikrishnan

Date of Decision: 16 October 2023

CRL.MC NO. 4045 OF 2021

AGAINST THE ORDER/JUDGMENT CP 14/2020 OF JUDICIAL
MAGISTRATE OF FIRST CLASS, PAYYANNUR

PETITIONER/S:

1 KUTHIRALAMUTTAM SAJI, AGED 39 YEARS

[REDACTED]

[REDACTED]

[REDACTED]

4 SHIJU UTHIRALAMATTAM

[REDACTED]

5 ASOKAN KARAKKATT

[REDACTED]

6 SANTHOSH VILAYIL

[REDACTED]

7 K.V.PIRUSHOTHOMAN,

[REDACTED]

8 NITHEESH KUMAR P.V.

[REDACTED]

BY ADV C.P.PEETHAMBARAN

Versus

RESPONDENT/S:

1 STATE OF KERALA

REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM-682031.

2 SUBAIDHA MOOPANTAKATH, AGED 47 YEARS

[REDACTED]

-2-

Sections, Acts, Rules, and Articles:

Section 202, 323, 391 of the Criminal Procedure Code (Cr.P.C)

Sections 324, 506 (i)(ii), Section 308, 141, 142, 146, 148, 354, 294(b), 324, 423, 341, 447, 506(ii) of the Indian Penal Code (IPC)

Subject: Invocation of Section 323 Cr.P.C by a Magistrate and the necessity of providing a clear reason when transferring a case to the Sessions Court under this section.

Headnotes:

Criminal Procedure – Invocation of Section 323 Cr.P.C – Necessity of a speaking order when invoking Section 323 Cr.P.C to transfer a case to the Sessions Court – Lack of a clear reason stated in the order for transferring the case – Order set aside – Magistrate directed to reconsider whether Section 323 Cr.P.C should be invoked in light of this order. [Para 5-6]

Referred Cases: None.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16.10.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

The petitioners are accused Nos.1 to 8 in C.P.No.14 of 2020 on the file of the Chief Judicial Magistrate Court, Payyannur, which is now pending as S.C. No.165 of 2020 on the file of the Sessions Court, Thalassery.

2. The prosecution case is that on 05.03.2013, one Mammu, hurled an explosive towards the SNDP office at Prappoyil, Kannur District, within the then Peringome Police Station limit and one K.R.Santhosh informed this fact to the police. Infuriated by this, the said Mammu assaulted the said Santhosh and attempted to commit murder and thereby committed offences under sections 324, 506 (i) (ii) and Section 308 IPC and the police registered the case as Crime No.128 of 2013 of Peringome Police Station. As a counter blast, it is submitted that the 2nd respondent herein, the wife of said Mammu filed

a private complaint before the Judicial First Class Magistrate Court Payyannur as evident by Annexure A1. After Section 202 Cr.P.C enquiry, the case was numbered as C.C. No.417 of 2014 and the Magistrate issued summons to the petitioners and they entered appearance. The case was proceeded as a warrant case. The evidence under Section 244 Cr.P.C was permitted to be adduced and four witnesses were examined on the side of prosecution. Thereafter, a charge was framed under Sections 141, 142, 146, 148, 354, 294(b) 324, 423, 341, 447 and 506(ii) read with Section 149 IPC. Even though an offence under Section 391 IPC was alleged in Annexure A1 complaint, learned Magistrate has not taken cognizance is the submission. It is also submitted that the order not taking cognizance under Section 391 IPC was not challenged by the 2nd respondent complainant, is the further submission. After framing charge, the 2nd respondent was cross examined and Annexure A3 is the certified copy of the deposition. Thereafter, the remaining available witnesses were also cross examined and the prosecution evidence was closed and the case was posted for the examination of the accused under Section 313 Cr.P.C. The accused were questioned under Section 313 Cr.P.C. and posted the case for defence evidence. Thereafter, the matter was heard on 07.02.2020. But on 18.02.2020, the learned Magistrate, as per Annexure A4, the B Diary proceedings, recorded that the offence under Section 391 IPC is also made out. Hence, the learned Magistrate decided to invoke Section 323 Cr.P.C. Annexure A5 is the order passed by the learned Magistrate by which the powers under Section 323 Cr.P.C was invoked. Aggrieved by the same, this CrI.M.C is filed.

3. Heard counsel for the petitioner and the Public Prosecutor.

4. The short point to be decided in this case is whether the order passed by the learned Magistrate invoking the powers under Section 323 Cr.P.C is correct or not. Section 323 Cr.P.C reads as follows:

“323. Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.- If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provisions of Chapter XVIII shall apply to the commitment so made.”

5. As per Section 323 Cr.P.C, if it appears to the Magistrate at any stage of the inquiry into an offence or a trial before signing the judgment that the case ought to be tried by the court of session, he shall commit it to that court. Annexure A5 is the order passed by the learned Magistrate. It will be better to extract the relevant portion of Annexure A5 order:

“3. Originally this case was taken in to file CC-417/14 even though there is an offence U/s 391 IPC. Moreover that the matter was proceed as if it is warrant trial case otherwise than on police case. At the time of arguments, it is noticed that this matter ought to have been taken as CP instead of CC. Hence I am of the view that section 323 of CrPC can be invoked. Hence the above CC.No.417/14 converted into CP-14/2020.”

6. It is the case of the petitioner that Section 391 IPC was excluded at the time of taking cognizance and that part of the order is not challenged by the complainant and that became final. Thereafter, the learned Magistrate, invoking the powers under Section 323 Cr.P.C, committed the case observing that the matter ought to have been taken as committal proceedings instead of calendar case. I am of the opinion that the learned Magistrate has not complied with the condition precedent before committing the case invoking the powers under Section 323 Cr.P.C. To invoke Section 323 Cr.P.C, it should appear to the Magistrate that the case ought to be tried by the Sessions Court. Since the words **“it appears to him at any stage**” is used in Section 323 Cr.P.C, it is clear that when a Magistrate invokes the powers under Section 323 Cr.P.C, the reason for the same should be recorded. In other words, the Magistrate is required to give reason for thinking that the case ought to be tried by the Sessions Court, while invoking Section 323 Cr.P.C. Therefore, according to me, a speaking order is

necessary before invoking the powers under Section 323 Cr.P.C. A perusal of Annexure A5 order would show that the order passed by the learned Magistrate is not a speaking order stating the reason for thinking that the case ought to be tried by the Sessions Court. Therefore, I am of the considered opinion that Annexure A5 order is to be set aside and the learned Magistrate is to be directed to reconsider the matter as to whether Section 323 Cr.P.C should be invoked or not.

Therefore, this Crl.M.C is disposed of in the following manner:

1. Annexure A5 order dated 20.02.2020 of the Judicial FirstClass Magistrate Court, Payyannur in C.P. No.14 of 2020 is set aside including the order committing the case to the Sessions Court.
2. The Judicial First Class Magistrate Court, Payyannur is directed to reconsider whether Section 323 Cr.P.C is to be invoked in the light of the observations in this order.

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