



2025:KER:237

CRL.REV.PET NO. 47 OF 2024

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 6TH DAY OF JANUARY 2025 / 16TH POUSHA, 1946

CRL.REV.PET NO. 47 OF 2024

AGAINST THE ORDER DATED 22.11.2023 IN CMP No.6346 OF
2023 IN CC NO.197 OF 2022 OF CHIEF JUDICIAL MAGISTRATE,
PALAKKAD

REVISION PETITIONERS/ACCUSED No.5:

- 1 AJITH
AGED 20 YEARS
S/O BIJU, THIRUVANCHIKULAM HOUSE, P.O.KARALAM,
THRISSUR DISTRICT., PIN - 680711
- 2 JISHNU
AGED 20 YEARS
S/O SHAJU.K.V, KAKKERI HOUSE, P.O.KARALAM, THRISSUR
DISTRICT, PIN - 680711

BY ADVS.
DHANYA P.ASHOKAN (Sr.)
M.R.VENUGOPAL
ATHULYA V.R.

RESPONDENT/COMPLAINANT:

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

SMT.SREEJA.V- Sr.PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 06.01.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**ORDER**

The petitioners are the accused Nos. 5 and 6 in C.C.No.197 of 2022 pending before the Chief Judicial Magistrate Court, Palakkad (for short 'the trial court').

2. Altogether, there are 8 accused. The offences alleged are punishable under Sections 341, 342, 324, 506(i), 394, 365 r/w 34 of IPC.

3. The prosecution case as revealed from the final report is that on 27.08.2022 at about 21.30 hours and in between 03.00 hours on 28.08.2022, the accused Nos.1 to 8 with intention to assault the defacto complainant, invited him to Palakkad and thereafter, the accused Nos.1 to 4 wrongfully restrained him, took the photographs of accused No.2 and the defacto complainant together in the mobile phone, the accused Nos.1 to 4 assaulted him with stone with intention to kill him and the petitioners aided accused Nos.1 to 4, 7 and 8 in committing the offence. It is also alleged that the accused Nos.1 to 6 committed robbery of a car worth Rs.14,00,000/-,



3

gold chain worth Rs.1,50,000/-, two mobile phones and other documents like ATM card, PAN card, Aadhar card etc., belonged to the defacto complainant.

4. The petitioners along with the remaining accused appeared before the trial court and they were released on bail. Thereafter, the petitioners approached this Court by filing Crl.M.C.No.7921 of 2023 to quash the proceedings against them. This Court disposed of the same as per the order dated 29.09.2023 granting an opportunity to the petitioners to file a discharge application before the trial court. Thereafter, the petitioners preferred discharge application before the trial court as CMP.No.6346 of 2023. The trial court, after hearing both sides, dismissed the said application as per the impugned order. It is challenging the said order, the petitioners have filed this revision petition.

5. I have heard the learned Senior Counsel Smt.Dhanya P.Ashokan as instructed by Adv.Venugopal M.R, the learned counsel appearing for the petitioners and the learned Public Prosecutor.



4

6. The learned Senior Counsel appearing for the petitioners submitted that even if the entire allegations against the petitioners in the final report are believed in toto, no offence has been made out against the petitioners. The learned Senior Counsel further submitted that the charges against the petitioners are groundless and the trial court ought to have discharged them. On the other hand, the learned Public Prosecutor submits that there are prima facie materials on record to attract the offences against the petitioners and when a prima facie case is made out, the jurisdiction under Section 239 of Criminal Procedure Code to discharge the accused cannot be exercised. The learned Public Prosecutor further submitted that the trial court rightly dismissed the application for discharge.

7. The learned Public Prosecutor made available to me the entire case diary. The crime was registered based on the statement given by the defacto complainant. I have perused the F.I statement as well as the further statement given by the defacto complainant. There is no whisper against



the petitioners either in the F.I statement or in the further statement. The allegations in the F.I statement and in the further statement are only against the accused Nos. 1 to 4. There is no case for the defacto complainant in his statements that the petitioners were present at the place of occurrence, at the time of the alleged incident. Apart from the defacto complainant, another witness, namely Sharath has been cited as an eye witness. In his statement also, there is no whisper against the petitioners. No other eye witnesses have been cited. I have perused the statement of all the 15 witnesses cited by the prosecution in the final report, and also the entire records. In none of the statement or in the documents, there are allegation against the petitioners. However, in the final report, it is vaguely alleged that the petitioners aided the remaining accused in the commission of the offence without any supporting materials. The learned Public Prosecutor on perusal of the CD submitted that in the confession statement of accused Nos.1 to 4 and also that of the petitioners recorded by the Investigation Officer, the role of the petitioners in the



commission of offence has been clearly admitted. The learned Public Prosecutor further submitted that at the time of arrest, all the accused including the petitioners were together. It is trite that based on the confession statement of the accused or co-accused, without any other material to connect them, a person cannot be arrayed as an accused. The fact that the petitioners were found along with the remaining accused at the time of the arrest is also not a ground to infer that the petitioners are also involved in the crime.

8. In paragraph 10 of the impugned order, the trial court has stated that the prosecution alleges that the petitioners have come to the place of the incident along with accused Nos. 1 to 4 in a car, were present in the scene of occurrence, shared common intention with A1 to A4 and aided other accused in committing the offence. The mere allegation of the prosecution, without any supporting materials to prove the petitioners' presence at the place of the incident and to connect them with the alleged offence, is not a ground to charge them for the alleged offences. There is also absolutely



2025:KER:237

CRL.REV.PET NO. 47 OF 2024

7

no material on record to suggest that the petitioners shared any common intention with accused Nos.1 to 4 to commit the offences. On perusal of the final report and other documents, I am satisfied that the charges against the petitioners are groundless and they are liable to be discharged. Accordingly, the impugned order is set aside and the petitioners are discharged.

This revision petition stands allowed.

sd/-

DR. KAUSER EDAPPAGATH
JUDGE

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