

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

Crl.MC.No. 1651 of 2014 ()

AGAINST THE ORDER/JUDGMENT IN CC 92/2005 of J.M.F.C.-
II, THIRUVANANTHAPURAM DATED 25-02-2014

PETITIONER(S)/COMPLAINANT:

C.CHANDRA BABU
KOCHUPUTHUVAL PUTHEN VEEDU, BOARD MEMBER
SREE PAZHANJIRA TEMPLE TRUST, AMBALATHARA
THIRUVANANTHAPURAM -1.

BY ADVS.SRI.D.KISHORE
SMT.MINI GOPINATH

RESPONDENT(S)/STATE AND ACCUSED 1 TO 13:

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1. STATE OF KERALA
REPRESENTED BY ITS PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM – 682 031.
 2. C. RAVEENDRAN
FORMER PRESIDENTN, NOW TRUST MEMBER
SREE PAZHANJIRA TEMPLE TRUST, PAZHANJIRA, AMBALATHARA
THIRUVANANTHAPURAM - 1.
 3. P.MURUGAN
FORMER SECRETARY, NOW TRUST MEMBER
SREE PAZHANJIRA TEMPLE TRUST, PAZHANJIRA, AMBALATHARA
THIRUVANANTHAPURAM - 1.
 4. V. MOHANDAS
FORMER JOINT SECRETARY, NOW TRUST MEMBER
SREE PAZHANJIRA TEMPLE TRUST, PAZHANJIRA, AMBALATHARA
THIRUVANANTHAPURAM - 1.
 5. K. RAMESH BABU
FORMER TREASURER, NOW TRUST MEMBER
SREE PAZHANJIRA TEMPLE TRUST, PAZHANJIRA, AMBALATHARA
THIRUVANANTHAPURAM - 1.
 6. G. VIKRAMAN
TRUST MEMBER, SREE PAZHANJIRA TEMPLE TRUST, PAZHANJIRA
AMBALATHARA, THIRUVANANTHAPURAM - 1.

7. V. VIJAYAN
TRUST MEMBER, SREE PAZHANJIRA TEMPLE TRUST, PAZHANJIRA
AMBALATHARA, THIRUVANANTHAPURAM - 1.
8. B. VENU
TRUST MEMBER, SREE PAZHANJIRA TEMPLE TRUST, PAZHANJIRA
AMBALATHARA, THIRUVANANTHAPURAM - 1.
9. V. SUDHRSANAN
TRUST MEMBER, SREE PAZHANJIRA TEMPLE TRUST, PAZHANJIRA
AMBALATHARA, THIRUVANANTHAPURAM - 1.
10. K.P. PEETHAMBARAN
TRUST MEMBER, SREE PAZHANJIRA TEMPLE TRUST, PAZHANJIRA
AMBALATHARA, THIRUVANANTHAPURAM - 1.
11. R. SANAL
TRUST MEMBER, SREE PAZHANJIRA TEMPLE TRUST, PAZHANJIRA
AMBALATHARA, THIRUVANANTHAPURAM - 1.
12. M.S. SUNIL
TRUST MEMBER, SREE PAZHANJIRA TEMPLE TRUST, PAZHANJIRA
AMBALATHARA, THIRUVANANTHAPURAM - 1.
13. K.P. KRISHNAN
TRUST MEMBER, SREE PAZHANJIRA TEMPLE TRUST, PAZHANJIRA
AMBALATHARA, THIRUVANANTHAPURAM - 1.
14. S. SUDHAKARAN
TRUST MEMBER, SREE PAZHANJIRA TEMPLE TRUST, PAZHANJIRA
AMBALATHARA, THIRUVANANTHAPURAM - 1.

R2-R7,R9-R12&14 BY ADV. SRI.GOPAKUMAR R.THALIYAL
R2-R7,R9-R12&14 BY ADV. SRI.A.CHANDRA BABU
R1 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE.P

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
22.1.2015, THE COURT ON 12.2.2015, PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE I: TRUE COPY OF THE COMPLAINT IN C.C. 92 OF 2005 OF JUDICIAL FIRST CLASS OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, THIRUVANANTHAPURAM.

ANNEXURE-II: TRUE COPY OF THE ORDER DATED 26.6.2009 IN C.C. 92 OF 2005

ANNEXURE III: TRUE COPY OF THE REPORT OF THE ADVOCATE COMMISSIONER DATED 11.8.2008 IN O.S. 1.2003 OF DISTRICT COURT, THIRUVANANTHAPURAM

ANNEXURE IV: TRUE COPY OF THE AFFIDAVIT AND PETITION IN I.A 622 OF 2011 IN O.S 1/03 OF FIRST ADDITIONAL DISTRICT COURT,T THIRUVANANTHAPURAM

ANNEXURE V: TRUE COPY OF THE AFFIDAVIT SWORN IN BY SRI.PRATHAPA CHANDRAN IN C.C. 92 OF 2005

ANNEXURE VI: TRUE COPY OF AFFIDAVIT DATED 18.10.2013 SWORN IN BY SRI.V.MOHANDAS IN C.C. 92/2005

ANNEXURE VII: TRUE COPY OF THE PETITION IN CMP 159/2014 IN C.C 92/2005

ANNEXURE VIII: TRUE COPY OF THE OBJECTION DATED 1.2.2014 TO ANNEXURE VII

ANNEXURE IX: TRUE COPY OF THE ORDER DATESD 25.2.2014 IN CMP 159/2014 IN C.C 92/2005 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, THIRUVANANTHAPURAM.

RESPONDENTS EXHIBITS:

ANNEXURE R4(a): TRUE COPY OF THE COMPLAINT DATED 16.7.2002

ANNEXURE R4(b): TRUE COPY OF THE FIRST INFORMATION REPORT DATED 18.07.2002 IN CRIME NO.99/2002 OF POONTHURA POLICE STATION

ANNEXURE R4 ©: TRUE COPY OF THE REFER REPORT DATED 21.2.2003

ANNEXURE R4 (d): TRUE COPY OF THE ORDER PASSED BY THIS HON'BLE COURT IN CRL.M.C NO.3307 OF 2013 DATED 30.8.2013

/TRUE COPY/

P.S TO JUDGE

P.UBAID, J.
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**Crl.M.C No.1651 of 2014**  
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Dated this the 12th February, 2015

ORDER

The petitioner herein is the complainant in C.C No.92 of 2005 of the Judicial First Class Magistrate's Court-II, Thiruvananthapuram. The first complaint filed by the petitioner before the learned Magistrate was forwarded for investigation to the Police under Section 156 (3) of the Code of Criminal Procedure (for short 'Cr.P.C'). He alleged the offences under Sections 379, 403, 406, 464 and 465 of Indian Penal Code (for short 'I.P.C') in the said complaint. After thorough investigation, the Police referred the crime and submitted final report accordingly in court. Thereafter, the petitioner herein filed a protest complaint on which the learned Magistrate conducted necessary enquiry as provided under the law. After due enquiry, the learned Magistrate took cognizance under Sections 403, 406 and 465 read with 34 of I.P.C. The complainant adduced pre-charge evidence under Section 244 of the Cr.P.C. On the basis of the pre-charge evidence, the learned Magistrate

framed a charge against the accused under Sections 403 and 406 of I.P.C. As regards the offence alleged under Section 465 of I.P.C, the learned Magistrate discharged the accused. Pending the proceedings, the petitioner filed an application for a direction to the 3rd accused to produce some documents in his possession. In reply to the request, the 3rd accused filed an affidavit in court that he is not, in fact, in possession of such documents and so he is not in a position to produce such documents in court. Alleging that it is a false affidavit, the complainant made an application before the learned Magistrate as C.M.P No.159 of 2014 with request to add some sections in the charge. He brought the said application under Section 216 of the Code of Criminal Procedure for alteration of the charge by adding Sections 191, 193, 199, 201, 203, 204 , 206 and 379 of I.P.C.

2. The learned Magistrate heard both sides on C.M.P. No.159 of 2014 and found that such request cannot be allowed. The learned Magistrate found that on the basis of the affidavit filed by the accused in court, nothing can be added to the charge already framed by the court.

Accordingly, the application filed by the complainant under Section 216 of Cr.P.C was dismissed by the learned Magistrate by order dated 25.2.2014. The said order is under challenge herein, and it is sought to be set aside.

3. On hearing both sides, I find that the petitioner's application to add to the charge, or for alteration of the charge was rightly dismissed by the learned Magistrate. The trial court framed charge under Sections 403 and 406 of I.P.C on the basis of the definite materials or evidence adduced by the complainant under Section 244 of Cr.P.C, read along with the allegations and averments in the complaint. This is a complaint case where the trial court can frame charge against the accused only on the basis of the pre-charge evidence adduced by the complainant under Section 244 of Cr.P.C and also the other materials placed by the complainant before the court. Finding that there is absolutely nothing to proceed under Section 465 of I.P.C, on which also, cognizance was taken, the learned Magistrate discharged the accused of the said offence, and framed a charge under Sections 403 and 406 of I.P.C. I find on a

perusal of the entire materials that nothing more could have been done by the trial court on the basis of the pre-charge evidence and other materials.

4. The petitioner seeks orders adding to the charge, or altering the charge on the basis of the affidavit filed by one of the accused during trial. It is not known how a charge can be framed against the accused on the basis of such an affidavit. It will definitely be against the fundamental principles of criminal law. It is also not known how such a charge can be framed or added against the other accused on the basis of an affidavit filed by the 3rd accused. Anyway, the trial court found that such a course is not possible under the law. Charge can be framed by the court in a complaint case only on the basis of the pre-charge evidence adduced by the complainant under Section 244 of Cr.P.C and also the materials produced by the complainant D:\judgments\j2014\jcrmc1651.sxwalong with the complaint. Of course, it is true that at any time, the trial court can add to the charge under Section 216 of Cr.P.C. But such alteration also must be on the basis of the

evidence and materials produced by the complainant before the court. In no circumstance can such a charge be altered on the basis of the affidavit filed by the accused. Accordingly, I find that the petitioner's application was rightly dismissed by the learned Magistrate.

In the result, this Crl.M.C is dismissed as meritless.

**Sd/-
P.UBAID
JUDGE**

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/True copy/

P.S to Judge