

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

CRL.REF.No. 1 of 2011 ()

CP.NO. 17/2010 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -II, KOCHI

SUO MOTU

RESPONDENTS:

**1. BAIJU @ THEEKKATTA BAIJU,
AGED 26 YEARS, S/O.RAPHI, CC 11/611,
NR. KARIPPALAM, MATTANCHERY.**

2. STATE OF KERALA.

R2 BY PUBLIC PROSECUTOR SMT. P.MAYA

**THIS CRIMINAL REFERENCE HAVING COME UP FOR ADMISSION
ON 25-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

sts

P. UBAID, J.

Crl. Reference No.1 of 2011

Dated this the 25th day of March, 2015

O R D E R

This reference was registered on report of the learned Sessions Judge, Ernakulam regarding a wrong committal made by the learned Judicial First Class Magistrate-II, Kochi in a crime involving the offence punishable under Section 22(b) of the NDPS Act. The prosecution case is that the 1st respondent herein (accused) was found possessing 1713 ampules of psychotropic substance. He was arrested on the spot by the police, and the quantity of psychotropic substance was seized. After investigation, police submitted final report before the Judicial First Class Magistrate Court-II, Kochi. The learned Magistrate wrongly took cognizance and numbered the case as C.C.No.1096/2008. The learned Magistrate even wrongly granted bail to the accused. Much later, the successor Magistrate realised the mistake, and accordingly, refiled the proceeding as committal proceeding. After complying with the procedure prescribed under the law, the learned Magistrate committed the case to the Court of Session. The procedural illegality that happened in the court below was

noticed by the learned Sessions Judge. He accordingly reported the fact to this Court. The case is now pending before the Court of Session. When the offence is triable by a special court, the police should have submitted the final report in the special court for direct cognizance. In such a circumstance, when direct cognizance is authorised by the law, committal under Section 209 Cr.P.C. is not possible. I find that the case was wrongly taken on file by the learned Magistrate as Calender Case, and it was wrongly committed to the Court of Session. The learned Magistrate who committed the illegality and even wrongly granted bail to the accused will have to explain the wrong procedure. This is left to the administrative side of the High Court. I find that the committal order is liable to be quashed, and the final report will have to be submitted by the police before the special court for proper procedure under the NDPS Act.

In the result, this reference is answered as follows:

- a) The committal order passed by the Judicial First Class Magistrate Court-II, Kochi on 13.10.2010 in C.P.No.17/2010 will stand quashed.
- b) The learned Sessions Judge will send back the records to the learned Magistrate, who committed the case.

- c) The learned Magistrate will return the final report to the police for presentation before the special court for appropriate legal procedure under the NDPS Act.
- d) Summons to the accused for appearance shall be issued from the special court, on cognizance being taken on the final report.

Sd/-

P. UBAID, JUDGE

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