

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

CRL.REF.No. 2 of 2015 ()

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SC 325/2011 of DISTRICT & SESSIONS COURT, PATHANAMTHITTA
CP 92/2011 of JUDICIAL FIRST CLASS MAGISTRATE COURT, ADOOR
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SUO MOTU

AGAINST

- 1. YESUDASAN @ ASURAN, S/O.CHAKKAYYAN
PORAMBOKE, OPPOSITE OF ANAYITHARAVELIPPILLY SCHOOL
VENKIDACHALAPURAM VILLAGE, BODY TALUK
THENY DISTRICT, TAMILNADU STATE**
- 2. KARUPPAYYA, S/O. MARIYAPPAN, NEAR PARAMASIVAM KOVIL
VENNILATHOLIA SUBRANAGAR COLONY
BODY TALUK, THENY DISTRICT, TAMILNADU STATE**
- 3. VADIVELU, S/O. SUBRAMANIYAN, BODYNAIKKANNUR URIL
DOOR NO.22, NEAR CHANDANAMARIYAMMAN KOVIL
BODY VILLAGE, BODY TALUK, THENY DISTRICT, TAMILNADU STATE**
- 4. PALANIVELU, S/O. CHURULIYAPPAN, DOOR NO.295
MELECHINTHALACHERIL KIZHAKKU THERUVU
UTHAMAPALAYAM VILLAGE, THENI DISTRICT, TAMILNADU**
- 5. STATE OF KERALA**

R5 BY PUBLIC PROSECUTOR SMT. S.HYMA

**THIS CRIMINAL REFERENCE HAVING COME UP FOR ADMISSION ON 24-02-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

SD

P. UBAID, J.

Crl. Reference No.2 of 2015

Dated this the 24th day of February, 2015

O R D E R

A wrong committal order in C.P.No.92/2011 dated 27.06.2011 of the Judicial First Class Magistrate Court, Adoor is sought to be quashed in this proceeding. This reference was registered on the report of the learned Sessions Judge, Pathanamthitta. The party respondents herein are the accused in the said case. The prosecution case against them is that in the night of 03.09.2007, they trespassed to the house of one Sreekuttan, and committed robbery of some valuables like ornaments from the possession of the said Sreekuttan and his wife Soumya, and in the process of robbery they also inflicted injuries on the body of Sreekuttan and his wife Soumya. The learned Magistrate wrongly initiated committal proceedings on getting final report in the crime, thinking that the victim of offence is a juvenile. Accordingly, the learned Magistrate committed the case to the Court of Session. The case proceeded for trial before the learned Sessions Judge as Special Judge.

During the examination of the 1st witness cited by the prosecution, the learned trial Judge found that this is not a case involving any child right, and that the victim of offence is not in fact a minor or juvenile. Trial was stopped there by the learned trial Judge, and he reported this fact to this Court, with a request to quash the committal order passed by the learned Magistrate.

2. On a perusal of the entire records including the FIR and the final report, I find that this is not a case involving any child witness, child victim, or child right. The main witnesses are one Sreekuttan and his wife Soumya. They are CW1 and CW2, cited by the prosecution in the final report. It is not known how the learned Magistrate got information that a child is also involved in this case as victim. The memo of evidence shows that such a child is not even cited as witness by the prosecution. Any way, the victims of offence are definitely the first informant Sreekuttan and his wife Soumya. I find that the case was wrongly committed by the learned Magistrate. Being not a case involving any child right or child victim, the wrong committal made by the learned Magistrate is liable to be quashed.

In the result, this Criminal Reference is answered as follows:

- a) The committal order passed by the learned Judicial First Class Magistrate, Adoor on 27.06.2011 in C.P.No.92/2011 will stand quashed.
- b) The learned Sessions Judge, Pathanamthitta will immediately transmit the records of the case back to the learned Magistrate for appropriate procedure, and the learned Magistrate shall proceed according to law from the stage at which the case was converted as committal proceeding.
- c) The learned Magistrate will proceed for trial after proper notice/summons to the concerned, including the accused in the case.
- d) In view of the fact that the accused are in custody, earnest efforts shall be made by the learned Magistrate to expedite the trial, and dispose of the case at the earliest.

Sd/-

P. UBAID, JUDGE

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