

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

CRL.REF.No. 3 of 2015

**AGAINST THE ORDER IN SC 441/2013 of ADDL. DISTRICT & SESSIONS COURT - II,
PATHANAMTHITTA
AGAINST THE ORDER IN CP 93/2012 of JUDICIAL FIRST CLASS MAGISTRATE COURT,
THIRUVALLA, DATED 10-06-2013**

ACCUSED(S):

SUO MOTU

COMPLAINANT(S):

1. **REJI, S/O.CHACKO,
KANYAKONI HOUSE, PUNNAKUNNAM MURI, KUTTPUZHA.**
2. **STATE OF KERALA.**

BY PUBLIC PROSECUTOR SMT.P.MAYA

**THIS CRIMINAL REFERENCE HAVING COME UP FOR ADMISSION
ON 11-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

P. UBAID, J.

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Crl.Ref. No.3 of 2015

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Dated this the 11th day of February, 2015

ORDER

The Excise Inspector Thiruvalla submitted final report in Crime No. 75/2006 under Section 55(a) of the Kerala Abkari Act against three persons before the Judicial First Class Magistrate, Court, Thiruvalla. On the final report, the learned Magistrate initiated committal proceedings as C.P.No.93/2012. The first accused remained in custody, but the accused 2 and 3 were released on bail. On 10.06.2013, the learned Magistrate committed the case as against the first accused alone to the Court of Session by order in C.P.No.93/2012. It appears that by oversight the learned Magistrate omitted to commit the case against accused Nos.2 and 3. Cognizance was taken in the Court of Session, and the case was made over to the learned Additional District and Sessions Judge-IV, Pathanamthitta. for trial. The learned trial Judge noticed the defect and reported the fact to the learned Sessions Judge, who in turn reported the fact to this Court, on which this proceeding was initiated.

2. On a perusal of the case records I find that there are three accused in the crime. While committing the case against the 1st accused, the case against the 2nd and 3rd accused was not split up by the learned Magistrate. There is reason to believe that the learned Magistrate made a whole committal, but by oversight he omitted to include the case against accused Nos.2 and 3. No doubt, the committal is bad in law, and it has to be set aside. The learned Magistrate will have to commit the whole case including that of accused Nos.2 and 3. In the absence of a committal, accused Nos.2 and 3 cannot face trial, and when their case stands not committed, the case against the first accused cannot proceed.

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

a) The committal order passed by the learned Judicial First Class Magistrate, Thiruvalla on 10.06.2013 in C.P.No.93/2012 will stand quashed.

b) The learned Sessions Judge, Pathanamthitta will immediately transfer the records of the case to the learned Magistrate.

c) The learned Magistrate will revive the committal proceedings and make a proper committal afresh of the whole case, after notice to all the accused.

P. UBAID, JUDGE

sj