

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE B.KEMAL PASHA**

**TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937**

**Crl.RC.No. 8 of 2015**  
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**SC 39/2010 OF ADDL. DISTRICT COURT (ADHOC-I), KALPETTA  
CRIME NO. 128/2009 OF S. BATTERY POLICE STATION, WAYANAD**

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**SUO MOTU PROCEEDINGS INITIATED ON A COMMUNICATION  
RECEIVED FROM DISTRICT COURT, KOZHIKODE.**

**AGAINST**

- 1. NASAR @ KODAVALLI NASAR,  
S/O.ABDHURAHMAN, PALAKKAL (H),  
FAIRLAND COLONY, SULTHAN BATHERY.**
- 2. SAITH, S/O.HAIDROSE,  
CHOKLI (H), NEAR KALPETTA FOREST OFFICE,  
PINANGODE ROAD, KALPETTA.**
- 3. K.B.BIJU, S/O.BALAN,  
KALATHIL (H), EDAKKUNI,  
KALPETTA.**
- 4. STATE OF KERALA**

**R1 & R3 BY ADVS. SRI.G.SREEKUMAR (CHELUR)  
SRI.K.ASHIS  
R4 BY SRI.K.I.ABDUL RASHEED, ADDL. DGP**

**THIS CRIMINAL REVISION CASE HAVING BEEN FINALLY HEARD ON  
03-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**msv/**

**B.KEMAL PASHA, J.**

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Crl.R.C.No.8 of 2015

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Dated this the 3<sup>rd</sup> day of November, 2015

**ORDER**

This Criminal Revision initiated under Section 401 Cr.P.C.

2. Heard the Additional Director General of Prosecution and the learned counsel for the respondents.

3. A quantity of 500 ml arrack and 5 ampules of Buprenorphine, each containing 2 ml, were allegedly seized from the accused in the case. Consequently, a crime was registered, which culminated in Sessions Case No.39 of 2010, which was made over to the Additional Sessions Court (Adhoc-I), Kalpetta. Charges were framed against the accused before

the said court on 07.02.2012. Thereafter, the said case was transferred by the Sessions Court, Kalpetta to Special Court (NDPS Act cases)/Additional District and Sessions Court, Vatakara.

4. The learned Additional Director General of Prosecution has pointed out that the date of occurrence on this case was 09.04.2009 and the Crime was registered as Crime No.128 of 2009, for the offences punishable under Section 22(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 8(1) and (2) of the Abkari Act read with Section 34 IPC. As on the date of occurrence, the seizure of the said 5 ampules, would constitute an offence under Section 22(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985 only, over and above the offence under Section 8(1) and (2) of the Abkari Act. The offence under Section 22(a) of the Narcotic Drugs and Psychotropic Substances Act, 1985 is triable by a Judicial First Class Magistrate. At the same time, the offence under Section 8

(1) and (2) of the Abkari Act is triable by a Court of Session. When an offence triable by a Magistrate is also there coupled with an offence exclusively triable by a Court of Session, there is nothing wrong in continuing the trial of both the offences by the Additional Sessions Court (Adhoc-I), Kalpetta as Sessions Case No.39 of 2010. The said court had framed the charges also on 07.02.2012.

5. When charges were framed in such a case, the Sessions Court had no power to transfer the said case, as per Section 409 (2) Cr.P.C. At any time before the trial of the case has commenced before the Additional Sessions Judge, the Sessions Judge may withdraw the case. When charges were framed before the Additional Sessions Court (Adhoc-I), Kalpetta, the trial had commenced and therefore the Sessions Judge, Kalpetta had no power to withdraw the case or to transfer the case to any court.

5. Another gross illegality is that the learned Sessions

Judge, Kalpetta had no power to transfer the case to the Special Judge (NDPS Act cases)/Additional District and Sessions Court, Vatakara for trial of NDPS cases. The Special Judge (NDPS Act cases)/Additional District and Sessions Court, Vatakara is coming within the Sessions Division of Kozhikode. The Sessions Judge of a particular Sessions Division has no power to transfer a case from that particular Sessions Division to another Sessions Division. The High Court only can exercise such a power. Matters being so, the transfer of the said case to the Special Judge (NDPS Act cases)/Additional District and Sessions Court, Vatakara by the Sessions Court, Kalpetta is totally erroneous.

In the result, this Criminal Revision is allowed and the impugned order passed by the Sessions Court, Kalpetta, whereby Sessions Case No.39 of 2010 of the Additional Sessions Court (Adhoc-I), Kalpetta was transferred to the Special Judge (NDPS Act cases)/Additional District and

Sessions Court, Vatakara, is quashed. The Special Judge (NDPS Act cases)/Additional District and Sessions Court, Vatakara shall transmit the records of the case back to the Sessions Court, Kalpetta. On getting the records, the Sessions Court, Kalpetta shall again make over the same to the Additional Sessions Court (Adhoc-I), Kalpetta, so that the trial can be proceeded with there.

**Sd/-**

**B.KEMAL PASHA  
JUDGE**

DSV/4/11/15

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*P.A. To Judge*

