

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

Crl.RC.No. 10 of 2015

**C.P.NO.15/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I,
MANANTHAVADY**

**SUO MOTU PROCEEDINGS INITIATED ON A COMMUNICATION
RECEIVED FROM THE SESSIONS JUDGE, KALPETTA.**

AGAINST :

- 1. SHYJAN, S/O.PAULOSE,
PUTHAN PURAKKAL HOUSE, KOTTARAMKUNNU (P.O),
KALLAMVETTY, PORUNNANNUR AMSOM.**
- 2. THE STATE OF KERALA.**

R2 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

**THIS CRIMINAL REVISION CASE HAVING BEEN FINALLY HEARD
ON 25-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

[CR]

B. KEMAL PASHA, J.

.....
C.R.R.C. No.10 of 2015
.....

Dated this the 25th day of September, 2015

O R D E R

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This is a criminal revision initiated under Section 401 Cr.P.C. The Deputy Superintendent of Police, Special Mobile Squad, Wayanad filed final report against the accused alleging offences under Sections 324 and 294(b) IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'special Act') in Crime No.413/2013 of Vellamunda Police Station.

2. On receipt of the final report and on a perusal of the records, the Judicial First Class Magistrate's Court-I,

Mananthavady was satisfied that the case against the accused is exclusively triable by the Court of Session, Kalpetta. Therefore, the matter was treated as CP.15/2014 and the learned Magistrate committed the case against the accused to the Court of Session, Kalpetta.

3. On getting the matter committed, the learned Sessions Judge, Kalpetta has entertained a doubt as to whether the matter could be committed to the Court of Session, Kalpetta, since a special court for the trial of offences under the special Act has been established at Mananthavady. The view taken by the learned Sessions Judge is that the learned Magistrate ought to have committed the case directly to the Special Court, Mananthavady for trial of the offences under the special Act. The learned Sessions Judge has also referred to the decision of the Apex Court in ***Gangula Ashok Vs. State of Andra Pradesh*** [2000 (1) KLT 609], wherein it was held that a special court under the Scheduled Castes and Scheduled

Tribes (Prevention of Atrocities) Act, 1989 is essentially a Court of Sessions and it can take cognizance of the offence only when the case is committed by the Magistrate in accordance with the provisions of the Code.

4. On going through Section 209 Cr.P.C., it seems that the view taken by the learned Sessions Judge is erroneous. As per Section 209 of the Code of Criminal Procedure, 1973, when in a case instituted on a police report or otherwise, the accused appears or brought before the Magistrate, and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit, after complying with the provisions of Section 207 or Section 208, as the case may be, the case to the Court of Session. Therefore, the only course open to the Magistrate when it appears to him in such a case that the offence is exclusively triable by the Court of Session, is to commit the case to the Court of Session. There is no other provision regarding committal in the Code of Criminal

Procedure, 1973. When the committal can only be under Section 209 Cr.P.C., the Magistrate is empowered to commit the case to the Court of Session only and not to any other court.

5. As per Section 9(1) of the Code of Criminal Procedure, 1973, the State Government shall establish 'a Court of Session' for every Sessions Division. As per Section 9(2), every Court of Session shall be presided over by a Judge, to be appointed by the High Court. Therefore, the appointment of a Judge as Sessions Judge of a Court of Session shall be made by the High Court. As per Section 9 (3), the High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise the jurisdiction in a Court of Session. From the above provisions, it is evident that there can be one Sessions Court only for a Sessions Division. If there are more courts established for exercising Sessions powers, such courts can only be Additional Sessions Courts or Assistant Sessions

Courts, as the case may be. Even in a case wherein a Special Court is there for the trial of the offences under the said special Act, it has got the status of an Additional Sessions Court only within the meaning of the Code of Criminal Procedure, 1973.

6. As per Section 14 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, for the purpose of providing speedy trial of the offences under the said Act, the State Government with the concurrence of the Chief Justice of the High Court, by notification in the official gazette, specify for each district 'a Court of Session' to be a Special Court to try the offences under the special Act. Therefore, a Court of Session in a district has to be specified as a Special Court. As pointed out earlier, there can only be one Sessions Court in a district. All the other courts exercising the powers of Sessions Court can only be treated as Additional Sessions Courts within the meaning of the Code of Criminal Procedure. The Magistrates dealing

with the matters shall commit the case to the Court of Session only and not to the Special Court. It is for the Sessions Court on getting it committed, to make over such cases to appropriate courts dealing with such matters.

7. The course that has to be adopted by the Magistrate as and when the Magistrate is dealing with a final report in which an offence under the said special Act has been made out, is that the learned Magistrate has to commit the case to the Court of Session under Section 209 Cr.P.C. There is no room for any doubt at all. The Magistrates, who are receiving final reports in such matters, need not ascertain the correct court by which the case is triable. It is not the look out of the Magistrate to examine as to whether a particular court has got the jurisdiction to try such cases. Under Section 209 Cr.P.C., the duty of the Magistrate is to commit the case to the Court of Session, when it appears to him that the offence involved is exclusively triable by a Court of Session.

8. Therefore, the course adopted by the learned Magistrate in this case is perfectly correct and there is absolutely nothing to interfere with the order of committal. The learned Sessions Court, Kalpetta is directed to make over the case to the concerned Special Court, which is dealing with the matter.

C.R.R.C. is disposed of as above.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/25/09

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PA to Judge