

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

Crl.RC.No. 11 of 2015

C.P.NO.54/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-III, PUNALUR

**SUO MOTU PROCEEDINGS INITIATED ON A COMMUNICATION
RECEIVED FROM THE ADDITIONAL DISTRICT AND SESSIONS
JUDGE-IV, KOLLAM.**

AGAINST :

- 1. ANEESH, S/O.THULASEEDHARAN,
PARANKAMVILA VEEDU, NORTH MARKET,
PAYYANALLOOR MURI, PALAMEL VILLAGE,
MAVELIKKARA TALUK, ALAPPUZHA DISTRICT.**
- 2. THE STATE OF KEALA.**

R2 BY PUBLIC PROSECUTOR SMT.P.MAYA

**THIS CRIMINAL REVISION CASE HAVING COME UP FOR ADMISSION
ON 30-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

[CR]

B.KEMAL PASHA, J.

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CRL.R.C. No.11 of 2015

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Dated this the 30th day of September, 2015

ORDER

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

2. The Final Report filed after the investigation for the offences under Sections 511 of 377 and 302 IPC was taken on file by the Judicial First Class Magistrate's Court-III, Punalur as C.P.No.54 of 2014. The accused was in custody at the Central Prison, Thiruvananthapuram. During the investigation, on 25.01.2013, the learned Magistrate has directed the Superintendent of Central Prison, Thiruvananthapuram to cause the accused to be examined by the Civil Surgeon as per Section 328 Cr.P.C. He was

admitted at the Mental Health Centre, Thiruvananthapuram on 28.01.2013 and thereafter vide letter dated 08.02.2013, the Superintendent of the Mental Health Centre, Thiruvananthapuram reported as follows:

“This patient admitted on 28.01.2013 has been observed for the past 10 days. He is found to have mental retardation-moderate with behaviour changes. His behaviour symptoms are in control. He does not need further inpatient care in this centre.”

3. As the learned Magistrate found that there was nothing to suggest that the accused was incapable of facing the trial, after complying with the formalities under Section 209 Cr.P.C., the learned Magistrate committed the case under Section 209 Cr.P.C. to the Sessions Court, Kollam. The case was taken on file as Sessions Case No.597 of 2014. The learned Sessions Judge made over the case for trial and disposal to the Additional Sessions Court-IV, Kollam.

4. The learned Additional Sessions Judge has presently found fault with the committal made by the learned Magistrate. According to the learned Additional Sessions

Judge, the accused is dumb and unable to speak. Further, according to the learned Additional Sessions Judge, the accused has mental retardation with behavioural changes. On verification of the medical report, the learned Additional Sessions Judge could find that the accused was labouring under 50% of mental retardation. On the said grounds, the learned Additional Sessions Judge has requested for getting the order of committal quashed.

5. On going through the matter, there is nothing to show that the order of committal passed by the learned Magistrate is erroneous. The learned Magistrate has complied with the formalities under Section 328 Cr.P.C. It seems that an inquiry as contemplated under Section 328 Cr.P.C. was conducted and the accused was subjected to examination by a Civil Surgeon. He was admitted to the Mental Health Centre, Thiruvananthapuram and a report was also obtained as narrated above. On getting that report, the learned Magistrate was satisfied that the accused was fit to stand the trial. In such case, the only course opened to the learned Magistrate was to commit the case against the accused to the court of

session under Section 209 Cr.P.C., when the accused was produced before the Magistrate and the Magistrate was satisfied that the offences alleged against the accused were exclusively triable by a court of session.

6. In the present case, the Additional Sessions Judge ought to have proceeded with the matter under Section 329 Cr.P.C. If it appeared to the learned Additional Sessions Court that the accused is not fit to stand trial due to unsoundness of mind and if he is incapable of making his defence, the learned Additional Sessions Court ought to have at the first instance tried the fact of such unsoundness and incapacity and if after considering such medical and other evidence satisfied on that fact, a finding to that effect ought to have been recorded and the trial ought to have been postponed. Instead of clamouring in respect of the validity of the committal order, the learned Additional Sessions Judge ought to have invoked the power under Section 329 (1) Cr.P.C.

7. Whatever it is, the learned Magistrate has committed the case under Section 209 Cr.P.C. It seems that the learned

Magistrate has complied with the provisions under Section 328 Cr.P.C. In the interregnum, if the illness of the accused had aggravated, it is the look out of the concerned Sessions Judge to deal with the matter under Section 329 Cr.P.C. instead of complaining about the committal. When the Additional Sessions Judge has powers under Section 329 Cr.P.C. to deal with the situation, the order of committal passed in this case need not be quashed.

This Criminal Revision Case is disposed of by directing the Additional Sessions Judge to have recourse to the provisions under Section 329 (1) Cr.P.C. and the other provisions, in accordance with law.

Sd/-

**B. KEMAL PASHA
JUDGE**

DSV/30/9/15

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P.A. To Judge