

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

**PRESENT:**

**THE HONOURABLE MR. JUSTICE P.D.RAJAN**

**TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937**

**Crl.Rev.Pet.No. 1373 of 2015 ()**  
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**AGAINST THE ORDER IN CMP.317/2013 OM S.C.95/10 OF  
II ADDL. ASST. SESSIONS COURT**  
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**REVISION PETITIONER(S):**  
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**SUGANDHI AGED 46 YEARS  
D/O.VASANTHI, TC 12/613, BARTON HILL COLONY  
KUNNUKUZHI WARD, VANCHIYOOR VILLAGE  
THIRUVANANTHAPURAM.**

**BY ADV. SRI.SHAJIN S.HAMEED**

**RESPONDENT(S):**  
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**STATE OF KERALA  
REPRESENTED BY THE CIRCLE INSPECTOR OF POLICE  
MUSEUM CIRCLE, THROUGH THE PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, ERNAKULAM.**

**BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON  
08-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**STK**

**P.D. RAJAN, J.**

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**Crl.R.P.1373 of 2015**  
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**Dated this the 8<sup>th</sup> of December 2015**

**ORDER**

Revision petitioner, who is the accused in S.C.95/10 on the file of the II<sup>nd</sup> Additional Assistant Sessions Court, Thiruvananthapuram challenges the order in CMP.317/2013 in S.C.95/10 of the above court. The above petition was filed under Section 227 of the Code of Criminal Procedure (hereinafter referred to as 'Code') for discharging the accused from the above case. The charge against the accused is that on 27.06.2008 at 10.15 pm, A1 invited CW2, Anilkumar @ Anikutten to his house and there was exchange of words, on hearing the shouting of A1, accused A2 to A4 came there, A1 went inside the room took a chopper, on seeing this CW2 (Anikuttan) tried to escape from there, at that time A2 and A4 restrained him and A1 caught hold on the hands of CW2 and A1 cut

twice with chopper, by which the right hand was chopped. After the incident A1 and A5 washed the room and cleaned the blood stains found inside the house and outside the house, thereby accused committed offence punishable under Section 326, 307, 201 and 34 IPC.

2. The petitioner in the trial court contended that, the allegation against her was only offence under Section 201 IPC and she was falsely implicated as an accused in this case. The first accused is her husband and no materials are produced by the prosecution to connect the petitioner with the alleged crime. She was implicated on an ulterior motive without alleging any overt act. She is a teacher by profession and no acquaintance with the crime. Her name was not mentioned in the FIR or in the other records. When there is no direct legal evidence to connect the accused, the trial is an abuse of process of law. Hence she prayed for a discharge but the trial court dismissed that petition. Being aggrieved by that, she approached this court with this revision petition.

3. Heard both sides.

4. The learned counsel appearing for the revision petitioner reiterated the contention raised in the trial court with regard to the evidence against the petitioner and contended that *prima facie* no evidence is available to connect her with this crime. He relied the decisions reported in **Amit Kapoor V. Ramesh Chander and Anr. (2012) 9 SCC 60, Satish Mahra V. State of N.C.T. of Delhi and Anr. AIR (2013 SC 506) and Vinay Tyagi V. Irshad Ali ((2013) 5 SCC 762).**

5. Section 227 itself contain the guidelines for conducting an enquiry for the purpose of discharging an accused. In a sessions case, when the accused appears or brought before the court in pursuance of the commitment of the case, the prosecutor shall open his case by describing the charge against the accused and stating by what evidence he propose to prove the guilt of the accused. It is the duty of the trial court to consider that argument and secure the attendance of the accused in the trial court. According to Section 227 of the Code, if upon consideration of the record of the case and the

documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. This provision is made to save the accused from prolonged harassment by way of trial when there is no sufficient ground for proceeding against the accused. Therefore primary responsibility of the Judge is that he has to consider that there is sufficient ground for proceeding against the accused or not. If there is no sufficient ground he shall discharge the accused and record his reasons. This is with a view to enable the court to examine the correctness of the reason for which the materials produced by the investigating officer and peruse where there is sufficient ground for proceeding. The sufficient ground would be considered in the nature of evidence produced by the police or recorded by the police before court.

6. The settled principle with regard to framing of

charge has been mandated by the apex court in **State of Bihar V. Ramesh Singh AIR 1977 SC 2018** held as follows;

“If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then on the theory of benefit of doubt, the case is to end in his acquittal. But if, on the other hand it is so at the initial stage of making an order under S.227 or S.228, then in such a situation ordinarily and generally the order which will have to be made will be one under S.228 and not under S.227.”

7. The above principle was followed by the Apex court in **Union of India V. Prafulla Kumar (AIR 1979 SC 366)**, held as follows;

10. Thus, on a consideration of the authorities mentioned above, the following principles

emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out;

2) Where the materials placed before the Court disclose grave suspicion against the accused which as not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

4. That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post-Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities

appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

The test and duty of the court are specifically laid down by the apex court. I have considered the relevant citation relied by the learned counsel appearing for the revision petitioner. From the facts in this case it is clear that, the trial court analysed the materials placed before it and not acted as a mouth piece of the prosecution, but had considered the broad probabilities of the prosecution case and the total effects of the prosecution evidence. A reading of the Section 227 and 228 together, it would be clear that at the initial stage of the trial, the veracity and effect of the evidence and truth are not to be judged meticulously. Moreover, the probable defence of the accused has no weight at this point. If that be the position, it is not a fit case to invoke revisional jurisdiction. I find no illegality in the order and there is no merit in this revision petition and Asst. Sessions Judge fairly considered

all the relevant aspects and dismissed the case. This revision petition is dismissed accordingly.

STK

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P.A. TO JUDGE

Sd/-  
**P.D. RAJAN,**  
**JUDGE**