

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 23rd DAY OF NOVEMBER 2015/2nd AGRAHAYANA, 1937

Crl.Rev.Pet.No. 1457 of 2015 ()

AGAINST THE ORDER IN SC 57/2012 of ADDL.DISTRICT AND
SESSIONS COURT - VII, ERNAKULAM DATED 04-11-2015

REVISION PETITIONER(S)/ACCUSED:

1. RIAS, AGED 33 YEARS
S/O.GAFOOR, H.NO.10/151, KURUBAYIL HOSUE
10TH LANE, KALPETHI BHAGAM, FORT KOCHI
NOW RESIDING AT RENTED HOUSE ANEY VINCENT
PATTALAM ROAD, FORT COCHI, ERNAKULAM DISTRICT.

2. AL-AMEEN, AGED 37 YEARS,
S/O.ABDUL RAUF, KUNNUMELE, PALLICHAL ROAD
THOPPUMPADY KARA, RAMESWARAM VILLAGE.

3. BONYJOY AGED 35 YEARS
S/O.JOY, VADAKKMCHERRY VEEDU, MANIYAPADY BHAGAM
U.C.COLLEGE, KARUMALLOOR VILLGE.

BY ADV. SRI.P.P.GENSON

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE
ALUVA POLICE STATION, KOCHI, ERNAKULAM DISTRICT.

BY PUBLIC PROSECUTOR SRI. V.S. SREEJITH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 23 -11-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

B. SUDHDEENDRAKUMAR, J.

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Crl.R.P. No. 1457 of 2015

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Dated this the 23rd day of November, 2015

ORDER

The Revision Petitioners are accused in SC 57 of 2012 on the files of the Addl. Sessions Court – VII, Ernakulam. The court below altered and framed the charge on 4-11-2015 adding Section 29 of the NDPS Act. Aggrieved by the said order, this Revision Petition has been filed.

2. Heard both sides.

3. It appears from the proceedings sheet of the court below that the court below framed charge against the accused for the offence under Section 22 (c) read with Sec. 8 (c) of the N.D.P.S. Act on 15-3-2011. PW1 to PW4 were examined and Exts. P1 to P14 were marked on 6-8-2015. The case stood posted for examination of the accused on 19-08-2015. On 19-08-2015, the evidence of prosecution was re-opened on the request of the accused. On 31-08-2015, PW1 to PW4 were cross-examined. Thereafter, the case stood again posted for the

examination of the accused under Section 313 Cr.P.C. on 7-09-2015. On that date, the accused persons were examined under Section 313 Cr.P.C. After complying with the legal formalities, DW1 and DW2 were examined and Ext. D1 was marked on 17-10-2015. The case stood posted for judgment to 4-11-2015. However, on 31-10-2015, the case was advanced and re-opened. DW3 was also examined. Thereafter, the case stood posted for hearing to 4-11-2015. On 4-11-2015, the charge was altered by the court below adding Section 29 of the NDPS Act. The charge was read over and explained to the accused. The accused pleaded not guilty. Thereafter, the court ordered to recall all the prosecution witnesses. The prosecution witnesses were present on 12-11-2015. On that date, the evidence was closed and the case stood posted for examination of the accused under Section 313 Cr.P.C. and the case was adjourned to 16-11-2015. On 16-11-2015, A1 to A3 were examined under Section 313 Cr.P.C. Thereafter, the case stood posted for defence evidence and hearing after the stage of 232 Cr.P.C. On 19-11-2015, the Court recorded that there was no defence evidence. On that date, the Court heard A3 and posted the case for judgment to 25-11-2015.

4. Section 216 Cr.P.C. empowers the court to alter or add to any charge at any time before judgment is pronounced. The court below had altered the charge before the pronouncement of the judgment. No circumstance has been brought to my notice to indicate that the order impugned suffers from any infirmity,

warranting interference by this Court.

5. In the result, this Revision Petitions stands dismissed.

6. However, the learned counsel for the petitioners has submitted that the court had made unnecessary observations which made the petitioners to believe that they would not get justice from the court. I am not persuaded to believe the said submission on its face value. However, on 18-11-2015, this Court directed the court below to transmit the readable copy of the proceedings sheet of the court below to this Court by fax. The proceedings sheet would show that the case was posted to 19-11-2015 for defence evidence and hearing. The court below was aware of the pendency of the matter before this Court. However, the court below, on 19-11-2015, took up the matter for judgment hastily without hearing the learned counsel for the accused.

7. It is settled law that no criminal case can be disposed of without hearing the party or his counsel. However, in this case, the court below had taken up the matter for judgment without hearing the learned advocates for the accused as is evident from the proceedings of the court below dated 19-11-2015.

9. In the said circumstances, I am of the view that it is not proper to permit the court below to decide the case on merits. Accordingly, this Court, invoking the powers conferred

upon this Court under Section 397 read with Sec. 407 of the Code, order to transfer S.C. No. 57 of 2012 on the files of the Addl. Sessions Court – VII, Ernakulam to Addl. Sessions Court, VI, Ernakulam. The court below is directed to transmit the entire records to the transferee court forthwith.

The parties shall appear before the transferee court on 21-12-2015.

B. SUDHDEENDRAKUMAR,
JUDGE.

Ani/21-11-2015.