

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

Crl.Rev.Pet.No. 2621 of 2011 ()

AGAINST THE ORDER IN SC 665/2010 of PRINCIPAL ASSISTANT SESSIONS
COURT, ERNAKULAM DATED 22-08-2011

REVISION PETITIONER/ACCUSED:

DEBASHISH CHOWDHARY, S/O. CHOWDHARY,
NO. 59A, IDAMANNEL VEEDU, AMRIDHANANTHAMAYI QUARTERS,
PONEKKARA KARA, ELAMAKKARA VILLAGE, ERNAKULAM.

BY ADVS. SRI. M. K. DAMODARAN (SR.)
SRI. ALAN PAPALI
SRI. SOJAN MICHEAL
SRI. GILBERT GEORGE CORREYA
SRI. V. S. BOBAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA, (CRIME NO. 2338/2010-
CIRCLE INSPECTOR OF POLICE, CITY TRAFFIC WEST
POLICE STATION, ERNAKULAM), REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. RAJESH VIJAYAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
08-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE-I: TRUE COPY OF THE F.I.R AND FINAL REPORT IN CRIME NO.2338/2010 OF CITY TRAFFIC WEST POLICE STATION, ERNAKULAM DATED 21.4.2010.

ANNEXURE-II: TRUE COPY OF THE CHARGE DATED 22.8.2011 IN SC.NO.665/2010 FRAMED BY THE COURT OF THE PRINCIPAL ASSISTANT SESSIONS JUDGE, ERNAKULAM.

ANNEXURE-III: TRUE COPY OF THE ALTERNATE CHARGE DATED 22.8.2011 IN SC.NO.665/2010 FRAMED BY THE COURT OF THE PRINCIPAL ASSISTANT SESSIONS JUDGE, ERNAKULAM.

/TRUE COPY/

P.S. TO JUDGE

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K. RAMAKRISHNAN, J.

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Crl.R.P.No.2621 of 2011
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Dated this the 8th day of April, 2015.

O R D E R

The accused in S.C.No.665/2010 on the file of the Principal Assistant Sessions Court, Ernakulam, is the revision petitioner herein. The revision petitioner was charge sheeted by the Circle Inspector of Police, Kochi City Traffic West Police Station, alleging an offence under section 304 of the Indian Penal Code on the allegation that while he was driving the car with Reg.No.AP-11/J 4067 on 7.3.2010 at 2.15 p.m through M.G.Road, Ernakulam knowing that it is likely to cause death of innocent persons, who are passing through the public road, and hit against a person and caused his death and thereby he had committed the offence punishable under section 304(A) of Indian Penal Code.

2. Originally crime was registered for the offence under section 308 of the Indian Penal Code, but after investigation final report was filed against the revision petitioner for the offence under section 304 of the Indian Penal Code. Later it was committed to the Sessions Court, Ernakulam where it was taken on file as S.C.No.665/2010 and thereafter it was made

over to the Principal Assistant Sessions Court, Ernakulam for disposal. Earlier, after hearing both sides, the learned Principal Assistant Sessions Judge had framed charge for the offence under section 304 of the Indian Penal Code as per Annexure-II. Thereafter the court felt that without framing additional charge under section 304(A) of the Indian Penal Code, if ultimately he has to be convicted for the offence, if ingredients of section 304 of the Indian Penal Code has not been made out by the prosecution, conviction under section 304 (A) of the Indian Penal Code cannot be entertained and it was on that basis that additional charge under section 304(A) of the Indian Penal Code was framed as per Annexure-III order. This order is being challenged by the revision petitioner by filing this revision.

3. Heard the learned senior counsel Sri.M.K.Damodaran appearing for the revision petitioner and Sri. Rajesh Vijayan, the learned Public Prosecutor appearing for the State.

4. The learned senior counsel appearing for the revision petitioner submitted that since the offences alleged are mutually contradictory to each other and the allegations and the nature of things to be proved are also different, it is not proper to frame additional charge under section 304(A) of the Indian Penal

Code.

5. But, the learned Public Prosecutor supported the order of the court below.

6. In the decision reported in **Vijayan v. State of Kerala** (1991 (1) KLT 325), this Court has considered the question as to whether in a case where the charge was filed under section 304 of the Indian Penal Code, the accused can be convicted for the offence under section 304 of the Indian Penal Code, if later it is found that it is only a negligent act and not an act falling under section 304 of the Indian Penal Code and held that it is not possible unless an alternate charge under section 304 (A) of the Indian Penal Code is framed by the court. That gives an indication that in a case where there is doubt regarding the nature of offence committed, charge can be framed for both possible offence by the court and decide on the basis of evidence as the offence that has been committed by the accused. The same view has been reiterated in the decision reported in **Benny v. State of Kerala** (1991 (1) KLT 695). The same principle has been now affirmed by the apex court in the decision reported in **Alister Anthony Pareira v. State of Maharashtra** (2012 (2) SCC 648) and **State through PS**

Lodhi Colony, New Delhi v. Sajeed Nanda (2012(8) SCC 450). So, under the circumstances, there is no illegality committed by the court in framing additional charge for the offence under section 304(A) of the Indian Penal Code by the Principal Assistant Sessions Judge, which requires interference at the hands of this Court using the revisional power. So, this revision is dismissed.

Office is directed to communicate a copy of this order to the concerned court immediately.

Sd/-
K. RAMAKRISHNAN, JUDGE.

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/true copy/

P.S to Judge

