

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

OP(Crl.).No. 249 of 2015 (Q)

CC 432/2000 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, ALATHUR
.....

PETITIONER(S)/COMPLAINANT:

**VADAKKENCHERRY CO-OPERATIVE SERVICE BANK LTD. NO.1219,
REPRESENTED BY ITS SECRETARY, VADAKKENCHERRY P.O.,
PALAKKAD DISTRICT.**

**BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR**

RESPONDENT(S)/STATE & ACCUSED:

- 1. C. RAJAN,
PROPRIETOR, SREE NARAYANA RICE MILL, PULLAMPADAM,
VANDAZHI P.O., ALATHUR, PALAKKAD DISTRICT-678 706.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, KOCHI-682 031.**

R2 BY GOVERNMENT PLEADER SMT.MAYA

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 05-10-2015,
ALONG WITH CRL.MC.5202/2015, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:**

msv/

OP(Crl.).No. 249 of 2015 (Q)

APPENDIX

PETITIONER(S)' EXHIBITS

**P1: A TRUE COPY OF THE FIR DATED 26-01-1998 IN CRIME NO.13/1998 OF THE
MANGALAPURAM POLICE STATION.**

P2: A TRUE COPY OF THE FINAL REPORT DATED 17-11-1999 IN CRIME NO.13/1998.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

MsV/

[CR]

B. KEMAL PASHA, J.

.....
O.P.(Crl) No. 249 of 2015 &
Crl.M.C. No. 5202 of 2015
.....

Dated this the 5th day of October, 2015

J U D G M E N T

O.P.(Crl)No.249 of 2015 is filed by the defacto complainant to have an expeditious disposal of the matter. Crl.M.C.No.5202 of 2015 is filed by the accused in C.C.No.432 of 2000 of the Judicial First Class Magistrate's Court, Alathur, challenging Annexure-4 order.

2. On appearance of the accused before the court below, charges were framed against the accused on 09.08.2002. Annexure-2 shows that the charge has been read over and explained to the accused. The accused pleaded not guilty of the charges. The accused as well as the concerned judicial officer has affixed signatures in Annexure-2, which evidently shows that the charges were

framed.

3. Later, out of 141 witnesses cited by the prosecution, PWs.1 to 35 were examined and Exts.P1 to P46 were marked. The evidence of the prosecution was closed on 05.03.2011. Thereafter, the accused was examined under Section 313 Cr.P.C. No defence evidence was adduced. The matter was taken up for final hearing. At that juncture, the learned counsel for the accused has pointed out before the court below that no charge in writing was framed by the court below. On verification of the court charge prepared by the then learned Magistrate, it was found that the then learned Magistrate had not affixed his signature in the court charge.

4. At the same time, the court charge prepared and read over to the accused was present among the records. The copy of the court charge is Annexure-1, which is nothing but almost a verbatim reproduction of the final report with some slight modifications.

5. When that was noticed, the court below has chosen to frame the charge once again and to conduct a *denovo* trial in an old matter like this. Either the defacto complainant or the accused has no case that any failure of justice has occasioned in the matter, on account of the want of signature of the learned Magistrate in the court charge, which was read over and explained to the accused. There is no case for the accused that there was any failure of justice or the accused is in any way prejudiced for the want of signature in the court charge.

6. As per Section 211(1) Cr.P.C. every charge under this Code, shall state the offence with which the accused is charged. As per Section 211(6) Cr.P.C. the charge shall be written in the language of the court. Here, a court charge has been framed in Malayalam language and evidently the same was read over and explained to the accused. The accused has affixed his signature in Annexure-2. Further, the learned Magistrate, who prepared the charge had also

affixed his signature in the space provided in the seal affixed in Annexure-2. Matters being so, Annexure-1 has to be treated as one appended with Annexure-2. In such a case, want of signature in Annexure-2 is of no significance at all.

7. As per Section 215 Cr.P.C. no error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

8. Here, decision taken by the court below through Annexure-4, to have a *denovo* trial is being challenged by the accused himself. The accused has no case that he was in any way misled in defending the charges, due to any error or omission. Admittedly there is no error in the court charge. At the same time, there is an omission from the part of the then Judicial Officer to affix his signature in the court charge. At the same time, the said charges were read over and

explained to the accused, and the accused pleaded not guilty of the charges. Both the signature of the accused as well as the concerned Judicial Officer are present in Annexure-2 of which Annexure-1 forms a part. In such a case, even if there is an omission to affix the signature in the court charge, it is of no consequence at all in view of Section 215 Cr.P.C. Even if some thing is not mentioned in the charges, at any stage of the case, the same cannot be considered unless the accused is misled by such error or omission or failure of justice has been occasioned thereby. Here the accused does not want to have a *denovo* trial. The accused has come up with a request to quash Annexure-4.

9. When such an omission was pointed out by the learned counsel for the accused before the court below, the court below ought to have treated it as a mere omission which has not resulted in miscarriage of justice, as the accused had also no case that the accused was misled in any way or it had resulted in failure of justice.

10. Over and above this, as per Section 465 Cr.P.C. even if such a case ends in conviction and sentence, even then, unless and until a failure of justice has been occasioned, the same cannot vitiate the trial or the judgment. In such a case, the court below ought not to have passed Annexure-4; whereas the court below ought to have proceeded with the final hearing of the matter and disposed it of in accordance with law on merits.

In the result, O.P.(Crl)No.249/2015 as well as Crl.M.C.No.5202/2015 are allowed. Annexure-4 order passed by the court below stands quashed. The court below is directed to hear the matter finally, based on the evidence already on record, and to dispose of the same on merits, in accordance with law, expeditiously, at any rate, within a period of two months from the date of receipt of a copy of this judgment.

Sd/-B.KEMAL PASHA, JUDGE.

Ul/- //true copy//

P.S. to Judge.