

Kerala High Court

P.Gopalakrishnan @ Dileep vs State Of Kerala on 9 March, 2020

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 09TH DAY OF MARCH 2020 / 19TH PHALGUNA, 1941

Cr1.MC.No.758 OF 2020(D)

AGAINST THE ORDER/JUDGMENT IN SC 118/2018 OF ADDITIONAL
SPECIAL SESSIONS COURT (SPE/CBI CASES)-III, ERNAKULAM

CRIME NO.297/2017 OF NEDUMBASSERY POLICE STATION ,
Ernakulam

PETITIONER/ACCUSED NO.8:

P.GOPALAKRISHNAN @ DILEEP, AGED 50 YEARS
S/O.LATE PADMANABHA PILLAI, PADMA SAROVARAM
HOUSE, KOTTARAKADAVU, ALUVA, ERNAKULAM
DISTRICT.

BY ADVS.
SRI.B.RAMAN PILLAI (SR.)
SRI.R.ANIL
SRI.M.SUNILKUMAR
SRI.SUJESH MENON V.B.
SRI.T.ANIL KUMAR
SRI.PHILIP T.VARGHESE RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN-686 031.

R1 BY SRI.SUMAN CHAKRAVARTHY, SENIOR
GOVT.PLEADER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 09.03.2020, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

Cr1.M.C. No. 758 of 2020

..2..

P.B.SURESH KUMAR, J.

Criminal M.C. No.758 of 2020

Dated this the 9th day of March, 2020.

ORDER

In this proceedings instituted under Section 482 of the Code of Criminal Procedure (Code), the petitioner seeks orders quashing Annexure C court charge in S.C. No. 118 of 2018 on the files of the Court of the Additional Special Sessions Judge, (SPE/CBI)-III, Ernakulam.

2. The petitioner is the eighth accused in the case which arose from Crime No.297 of 2017 of Nedumbassery Police Station. Annexure A is the final report in the case filed on 18.04.2017 without prejudice to the further investigation in the matter. Seven persons were arrayed as accused in the said final report. The accusation against the accused in Annexure A final report is that accused Nos.1 to 6 hatched a criminal conspiracy on 11.02.2017 and on other days to abduct CW1, a cine actress, rape her and videograph its visuals to extort money from her by putting her in fear of publicizing the CrI.M.C. No. 758 of 2020 ..3..

visuals. It is also alleged in the final report that on 17.02.2017, in prosecution of the said common object, while CW1 was on her way from Thrissur to Ernakulam in a vehicle driven by the second accused, accused Nos.1 and 3 to 6 abducted her, raped her and videographed the sexual assault in a mobile phone.

3. While so, on 10.04.2017, the petitioner submitted a complaint by mail and later, in writing to the Director General of Police alleging that some persons are trying to extort money from him in connection with the occurrence made mention of in the final report. It is alleged that the said complaint was though forwarded by the Director General of Police to the Officer in charge of investigation in Crime No. 297 of 2017 of Nedumbassery Police Station, no further action was taken.

4. Later on 22.11.2017, Annexure B additional final report was filed in the case arraying the petitioner as the eighth accused. The gist of the accusation in the additional final report is that due to the enmity of the petitioner towards CW1, he conspired with the first accused and offered to the first accused a sum of Rs.1.5 crores to commit sexual assault CrI.M.C. No. 758 of 2020 ..4..

on CW1 and to videograph its visuals. It is also alleged that it is in prosecution of the said common object that the first accused and other accused have committed the acts alleged in Annexure A final report. The case is that the accused have thus committed the offences punishable under Sections 120B, 342, 366, 376D, 506(i), 212, 201 and Section 34 of the Indian Penal Code and Sections 66E and 67A of the Information Technology Act.

5. After the committal proceedings, when the case was taken up by the Sessions Court, the petitioner preferred an application for discharge. The Court of Session framed charges in the case against the petitioner and other accused, after rejecting the application preferred by the petitioner for discharge. Annexure-C is the charges framed by the Court of Session. The petitioner has challenged the order rejecting his application for discharge before the Apex Court in a pending Special Leave Petition namely SLP(Crl.) 244 of 2020 by way of an interlocutory application therein. The said Special Leave Petition and the interlocutory application are yet to be disposed of. This Criminal M.C. is filed thereafter challenging Annexure C charges on the ground that charges 14, 15 and 16 CrI.M.C. No. 758 of 2020 ..5..

in Annexure-C pertain to the criminal conspiracy hatched by accused Nos.1, 9 and 10 at the District Jail, Kakkanad to extort money from the petitioner; that the various illegal acts committed by accused Nos.1, 9 and 10 in order to extort money from the petitioner in furtherance to the said conspiracy are not part of the transaction made mention of in the final reports and the aforesaid charges cannot therefore be tried in a case in which the petitioner is an accused, as he is the victim of the said criminal conspiracy and the various acts committed pursuant to the said conspiracy.

6. Heard the learned Senior Counsel for the petitioner as also the learned Public Prosecutor.

7. The learned Senior Counsel for the petitioner submitted that the trial of the petitioner on Annexure-C charge would cause grave prejudice to the petitioner and would result in miscarriage of justice. The learned Senior Counsel elaborated the submission pointing out that the conspiracy referred to in charges 14, 15 and 16 in Annexure -C charge cannot be considered as a continuation of the original conspiracy of which the petitioner is alleged to be a conspirator. According to the learned Senior Counsel, the CrI.M.C. No. 758 of 2020 ..6..

offences alleged against accused Nos.1, 9 and 10 in the said charges being different and distinct, the same cannot be tried along with the remaining charges, especially the charge relating to the alleged original conspiracy. It was pointed out by the learned Senior Counsel that the petitioner being the victim of the offences made mention of in charges 14, 15 and 16, his interest would not be protected during trial and he would be deprived of his valuable right and opportunity to adduce evidence as a prosecution witness in the case. The sum and substance of the arguments advanced by the learned Senior Counsel is that charges 14, 15 and 16 against accused Nos. 1, 9 and 10 are to be tried separately.

8. Per contra, the learned Public Prosecutor submitted that the CrI.M.C. is not maintainable. It was pointed out by the learned Public Prosecutor that the CrI.M.C is one instituted virtually challenging Annexure-C charge. According to the learned Public Prosecutor, the petitioner is not entitled to challenge Annexure C charge after moving the Apex Court for the very same purpose. As regards the merits of the matter, it was argued by the learned Public Prosecutor that if the charges framed are not proper, the court has the power to CrI.M.C. No. 758 of 2020 ..7..

alter the charges at any time.

9. I have considered the contentions of the petitioner as advanced by the learned Senior Counsel. Though the contentions would appear to be attractive at the first blush, on a close scrutiny, I do not find any substance in it.

10. It is seen that one of the grounds on which the petitioner sought discharge in the case is that the alleged criminal conspiracy hatched by accused Nos.1, 9 and 10 at the District Jail, Kakkanad and the various illegal acts committed by them in furtherance thereof, in order to extort money from the petitioner are not part of the transaction made mention of in the final reports and the aforesaid charges cannot, therefore, be tried in a case in which the petitioner is an accused. The said ground was repelled in terms of the order passed by the court below on the application preferred by the petitioner. The said order has not been successfully challenged by the petitioner. Further, the petitioner who is entitled to challenge the charge in a revision under Section 397 of the Code has also not preferred any revision petition challenging the charges framed against him. In

the circumstances, according to me, this proceedings under Section 482 of the Code challenging Crl.M.C. No. 758 of 2020 ..8..

indirectly charges 14, 15 and 16 is not maintainable.

11. Further, I do not find any merit also in the various contentions raised in the Criminal M.C. In the light of Clause (d) of Section 223 of the Code, there cannot be any doubt that persons accused of different offences committed in the course of the same transaction can be tried together. In *Balbir v. State of Haryana*, (2000) 1 SCC 285, it was held by the Apex court that the expression "same transaction" would mean not only a transaction consisting of a single act, but also a transaction consisting of series of connected acts. It was also held by the Apex Court in the said case that the series of acts which constitute a transaction must necessarily be connected with one another. It was further held in the said case that for several offences to be part of the same transaction, the test to be applied is whether they are so related to one another in point of purpose or of cause and effect or as principal and subsidiary, so as to result in one continuous action. It was also clarified in the said case that where there is commonality of purpose or design, where there is continuity of action, then all those persons involved can be accused of the same or different offences committed in the course of the same transaction. Crl.M.C. No. 758 of 2020 ..9..

Paragraphs 11 and 12 of the said judgment read thus:

11. According to Shri D.D. Thakur the case against the appellant and the case against Guria should have been consolidated together for a joint trial. He made an endeavour to show that two cases in respect of the murder of one person could be brought within the ambit of Section 223 of the Code (which corresponds to Section 239 of the old Code of 1898). As per that provision, all persons falling under any one of the seven categories enumerated therein can be charged and tried together. Out of those seven categories enumerated in the section we need not even advert to those categories indicated with placitum (b),

(c), (d), (e) and (f) of the section as they are not relevant in this context. We would, therefore, extract clauses (a) and (d) in Section 223 as under:

"223. The following persons may be charged and tried together, namely--

(a) persons accused of the same offence committed in the course of the same transaction;

(b)-(c) * * *

(d) persons accused of different offences committed in the course of the same transaction;"

In both the aforesaid clauses the primary condition is that persons should have been accused either of the same offence or of different offences "committed in the course of the same transaction". The expression advisedly used is "in the course of the same transaction". That expression is not akin to saying "in respect of the same subject-matter". It is pertinent to point

out that the same expression is employed in Section 220(1) of the Code also [corresponding to Section 235(1) of the old Code].

The meaning of the expression "in the course of the same transaction" used in Section 223 is not materially different from that expression used in Section 223(1) [sic 235(1)]. It is so CrI.M.C. No. 758 of 2020 ..10..

understood by this Court in State of A.P. v. Cheemalapati Ganeswara Rao¹. The following observation in the said judgment is contextually quotable:

"The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently, they would not form part of the same transaction but would constitute a different transaction or transactions. Therefore, even if the expression 'same transaction' alone had been used in Section 235(1) it would have meant a transaction consisting either of a single act or of a series of connected acts. The expression 'same transaction' occurring in clauses (a), (c) and (d) of Section 239 as well as that occurring in Section 235(1) ought to be given the same meaning according to the normal rule of construction of statutes."

12. For several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction".

The materials on record indicate that after the first accused was arrested in connection with the case and remanded to the District jail, Kakkanad, there was a meeting of mind between him, accused Nos 9 and 10 and one Vipin Lal, for the purpose of getting the money allegedly assured to them by the CrI.M.C. No. 758 of 2020 ..11..

petitioner, the eighth accused. It is seen that in the light of the said materials that charges 14, 15 and 16 have been framed by the court below. The aforesaid materials indicate that the meeting of mind between accused Nos.1, 9 and 10 at the District Jail, Kakkanad and the various acts committed by the accused thereupon are related to the conspiracy made mention of in the final reports in which the petitioner is one of the conspirators, in point of purpose. If that be so, in so far as the petitioner has no case that the aforesaid charges were unnecessary, accused Nos.1, 9 and 10 who are charged for the said criminal conspiracy to extort money from the petitioner can be tried jointly with other accused including the petitioner who are charged for the remaining offences committed in the course of the same transaction.

12. The arguments advanced by the learned Senior Counsel for the petitioner proceeds on the premise that charges 14, 15 and 16 are in respect of the criminal conspiracy alleged by the petitioner in his complaint to the Director General of Police dated 10.04.2017. It is on that basis, it was urged that the petitioner is a victim of the said conspiracy and the offences relating to the said conspiracy and of the various CrI.M.C. No. 758 of 2020 ..12..

acts committed by accused Nos.1, 9 and 10 pursuant to the said conspiracy are to be tried separately, after affording the petitioner an opportunity to adduce evidence or otherwise, the petitioner, who is the victim of the said offences would not get justice. As indicated in the preceding paragraph, a close reading of charge No.14 would indicate that the criminal conspiracy therein is a conspiracy hatched by accused Nos.1, 9 and 10 to extort money from the petitioner as agreed in the conspiracy mentioned in the first head of charge, of which the petitioner is one of the conspirators. The relevant portion of charge No.14 which discloses the said aspect reads thus:

".....Thereafter, first among you was arrested and remanded to District Jail, Ernakulam, and he hatched a criminal conspiracy with tenth among you and one Mr.Vipinlal to collect the money from eighth among you as agreed in the conspiracy mentioned in the first head of charge and in pursuance of that conspiracy stealthily obtained a mobile phone, and on 28.03.2017 contacted CW43 who is the close friend of eight among you....." (underline supplied) In other words, the conspiracy referred to in charges 14, 15 and 16 has nothing to do with the conspiracy which the petitioner is stated to have pointed out to the Director General of Police, for, going by the pleadings, the said conspiracy is an CrI.M.C. No. 758 of 2020 ..13..

independent conspiracy which has nothing to do with the conspiracy referred to in the final reports of which the petitioner is one of the conspirators. In the said view of the matter, the petitioner cannot be heard to contend that he would be put to prejudice, if charges 14, 15 and 16 are not tried separately.

For the aforesaid reasons, I do not find any merit in the criminal M.C. and the same is, accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR JUDGE ds .02.2020 CrI.M.C. No. 758 of 2020 ..14..

APPENDIX PETITIONER'S/S EXHIBITS:

ANNEXURE A THE TRUE COPY OF THE FINAL REPORT. ANNEXURE B THE TRUE COPY OF IIND FINAL REPORT FILED BEFORE THE JFCM COURT, ANGAMALI DATED 22.11.2017.

ANNEXURE C THE CERTIFIED COPY OF THE COURT CHARGE DATED 06.01.2020.