
(2012) 06 KL CK 0020
In the High Court Of Kerala
Case No : Criminal M.C. No. 2633 of 2006

Anju Srivastava

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 27-06-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 211, 212, 213, 482
Penal Code, 1860 (IPC) — Section 121, 241, 34, 406, 408

Citation : (2012) 3 KLJ 396

Hon'ble Judges : P.S. Gopinathan, J

Bench : Single Bench

Advocate : M.K. Damodaran and Sojan Micheal, for the Appellant; Lowsy A., PP, for the Respondent

Judgement

P.S. Gopinathan, J.—This is a petition u/s 482 of the Code of Criminal Procedure, filed by the 1st accused in C.C. No. 373/2005 on the file of the Judicial Magistrate of the First Class-I, Aluva, seeking an order to quash Annexure A1 final report and Annexure A36 court charge whereby the petitioner along with another is accused for offences under Sections 406, 408, 468, 420 and 477A read with 34 IPC, with a plea that the offences alleged are not made out. Having heard the learned counsel for the petitioner and perusing Annexure A1 and A36, I find that there are some allegations in Annexure A1 accusing the above offence. Almost all the allegations in Annexure A1 final report are copied in Annexure A36 and a consolidated charge was framed. I find that is not a proper procedure. It appears that no plea of discharge was advanced. Therefore, there was no occasion for the trial court to apply mind. The legislative intention discernible by Sections 211, 212 and 213 Cr.P.C. and Form No. 32 thereunder is that among other particulars, every charge shall state the offence with which the accused is charged, the offence shall be specified only by name, where the law does not give specific name, the definition of the offence be stated as to give the accused notice of the matter with which he is charged and the law and section of law shall be mentioned. At the same time, it shall be precise. When the charge is

with two or more heads, every head shall be separately specified. For a better appreciation a reference to Form No. 32, which reads as follows would be relevant.

FORM No. 32 Charges (See sections 211, 212 and 213) I. CHARGES WITH ONE-HEAD

(1)(a) I, (name and office of Magistrate, etc.), hereby charge you (name of accused person) as follows:--

(b) On Section 121.--That you, on or about the day of, at, waged war against the Government of India and thereby committed an offence punishable u/s 121 of the Indian Penal Code, and within the cognizance of this Court.

(c) And I hereby direct that you be tried by this Court on the said charge.

(Signature and seal of the Magistrate)

[To be substituted for (b)]--

II. CHARGES WITH TWO OR MORE HEADS

(1)(a) I, (name and office of Magistrate, etc.) hereby charge you (name of accused person) as follows:--

(b) On section 241 First--That you, on or about the day of at knowing a coin to be counterfeit, delivered the same to another person, by name, A.B. as genuine, and thereby committed an offence punishable u/s 241 of the Indian Penal Code, and within the cognizance of the Court of Session.

Secondly--That you, on or about the day of at, knowing a coin to be counterfeit attempted to induce another person, by name, A.B. to receive it as genuine, and thereby committed an offence punishable u/s 241 of the Indian Penal Code, and within the cognizance of the Court of Session.

(c) And I hereby direct that you be tried by the said Court on the said charge.

(Signature and seal of the Magistrate)

The intention of the legislator is very evident by the Form quoted above. It is not at all warranted to copy all allegations in the final report to the court charge. Accused can very well read it from the final report the copies of which are to be served in advance. Only relevant material need be in the court charge. It appears that Form No. 32 was not brought to the notice of the learned Magistrate. Almost all the commentaries on the Penal Code, under each penal provision also give the form in which the charge is to be framed for every offence. Instead of framing charge as prescribed, the learned Magistrate had found out a short cut method by copying almost all the allegations in Annexure A1 and the court charge was prepared. The result is that there is total lack of clarity. Annexure A36 doesn't

satisfy the statutory requirement. It is not in accordance with the Criminal Procedure Code. For that reason, I am persuaded to allow this petition and to quash Annexure A36. The learned Magistrate shall hear either side and fresh charge shall be prepared if the allegations in Annexure A1 make out any offence alleged or to discharge the accused if no offence is made out.

In the result, this petition is allowed in part. Annexure A36 charge would stand quashed and the matter is remanded back. The trial court is directed to hear the parties afresh and pass appropriate orders. In the event, no offence is made out, the accused shall be discharged. In the event, there are materials to frame charge, it shall be framed in Form No. 32. The case being a pretty old one, top priority shall be given and disposed of as expeditiously as possible.