

(2012) 09 KL CK 0002

In the High Court Of Kerala

Case No : Criminal M.A. 5911 of 2012 in Criminal Ref. 1 of 2012

Suo Motu

APPELLANT

Vs

Solji and Others

RESPONDENT

Date of Decision : 19-09-2012

Acts Referred:

Arms Act, 1959 — Section 25(1), 3
Criminal Procedure Code, 1973 (CrPC) — Section 209(a), 228(1)
Explosive Substances Act, 1908 — Section 5
Penal Code, 1860 (IPC) — Section 34

Citation : (2012) 4 KLJ 218 : (2012) 4 KLT 195

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

Bench : Single Bench

Advocate : Rajesh Vijayan, for the Respondent

Judgement

P.S. Gopinathan

1. This is a suo motu application basing upon a letter dated 15.5.2012 of the Sessions Judge, Thodupuzha. The brief facts leading to the letter is as follows: In Crime No. 82/2000, Marayoor Police Station, a final report was filed against 12 persons, accusing offence under S. 3 read with S. 25(1) of the Arms Act and S. 5 of the Explosive Substances Act and S. 506(h) read with S. 34 of the Indian Penal Code, before the Judicial Magistrate of the First Class, Devikulam, The learned Magistrate took Cognizance and the case was numbered as C.P.25/2009. In response to the process, accused 5 to 10 entered appearance. Despite the coercive steps, accused 1 to 4, 11 and 12 didn't appear. They were reported absconding. Hence the case against accused 1 to 4, 11 and 12 were split up and the case against accused 5 to 10 were committed to the Court of Session, Thoudupuzha under S. 209(a) of the Code of Criminal Procedure (Cr.P.C.). The learned Sessions Judge took cognizance as S.C.29/2011 against all the 12 accused without noticing that only the case against accused 5 to 10 were committed. Noticing that mistake, the learned Sessions Judge addressed a letter to the Registrar, Subordinate Judiciary, on 29.6.2011. On the basis of that letter,

Criminal Reference No. 1/2012 was filed. By order dated 22.3.2012, this Court quashed the order of the Sessions Judge taking cognizance against accused 1 to 4, 11 and 12. By the same time, the order taking cognizance against accused 5 to 10 were sustained. In the meanwhile, it was noticed that the offence alleged in the final report are triable by the Judicial Magistrate of the First Class. It appears that the case was committed by the learned Magistrate on concluding that offence under S. 5 of the Explosive Substances Act is exclusively triable by a Court of Session. Later, in the light of the decision reported in *Sabu v. State of Kerala* (2007 (2) KLT 516), the learned Magistrate understood that the offences alleged in the final report are triable before him and the order committing the case against accused 5 to 10 was not at all sustainable. The learned Magistrate wrote the Sessions Judge that such a mistake was committed. It is basing upon that letter, the learned Sessions Judge has now addressed the letter dated 15.5.2012 to this Court stating that the order committing the case is bad in law and hence sought for quashing the order of committal and to direct the Sessions Judge to forward the case back to the learned Magistrate to try along with the other accused in C.P. No. 60/2010.

2. Having heard the learned Government Pleader, I find that irrespective of the order dated 22.3.2012 in CrI. Reference No. 1/2012, the answer to the letter is in S. 228(1) Cr.P.C., which reads as follows:

228. Framing of charge:-

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which -

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

In the event an offence alleged in a final report is triable by a Magistrate, but the case was committed to the Court of Session mistakenly assuming that it is exclusively triable by a Court of Sessions, the Sessions Judge has to hear either side and frame charge for the offence revealed out by the allegations in the final report. If it is found that no offence exclusively triable by a Court of Session is disclosed, it is for the Sessions Judge, after framing charge for the offence disclosed to order transfer of the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate of the First Class and also to direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial

Magistrate of the First Class, on such date as he deems fit. No intervention of this Court is warranted to quash the committal proceedings and to direct the Sessions Judge to forward back the case to the Magistrate. It appears that the letter was written on wrong notion that if a case triable by a Magistrate is committed as if a case triable by a court of Session, there is no remedy in the Procedure Code.. Suffice to dispose the petition by directing the Sessions Judge to resort to the procedure under S. 228(1) Cr.P.C.

In the above circumstance, this petition is disposed of directing the Sessions Judge to frame charge as provided under S. 228(1) Cr.P.C. and order transfer of the case for trial to the Chief Judicial Magistrate or to any other Judicial Magistrate of the First Class, as he deems fit in the event the offence disclosed from the allegations is not exclusively triable by a Court of Session.