

IN THE COURT OF THE I ADDITIONAL SESSIONS JUDGE, THRISSUR.

Present:

Sri. K. Kamanees, Addl. Sessions Judge- I.

Tuesday the 09th day of June, 2026/19th Jyeshtha, 1947.

SC 568/2023

(Crime No. 1666/2017 of Kodungallur Police Station)

Complainant : State of Kerala - represented by The Sub
Inspector of Police, Kodungallur Police
Station

By Special Public Prosecutor Sri. M. K. Gireesh Mohan.

Accused : Samad, aged 61 years, S/o. Muhammed,
Puthenveetil House, Vellangallur Desom,
Thekkumkara Village, Thrissur District.

By Adv. Irene Joy. M., Adv. T. Sajith Menon & Adv. Alaya Paul. K.

Offences : U/ss. 20(b)(ii) (A) of the Narcotic Drugs
and Psychotropic Substances Act, 1985 and
Section 77 of the Juvenile Justice (Care
and Protection of Children) Act.

This sessions case is coming on this day for hearing and on the same
day the court passed the following:

ORDER

This is a case chargesheeted by Sub Inspector of Police, Kodungallur
Police Station alleging offences under Section 20(b)(ii) (A) of the Narcotic
Drugs and Psychotropic Substances Act, 1985 and Section 77 of the
Juvenile Justice (Care and Protection of Children) Act.

2. The case of the prosecution is that, the accused person was
found in possession of dried cannabis sativa, a narcotic drug, on
11.09.2017 at 9.25 a.m, Keralamvarma Higher Secondary School Junction,
Eriyad near the Fathima Saidumammed Memorial waiting shed and the
prosecution states that the accused had been engaged in the sale of the
narcotic to the school children. Therefore the offences.

3. The case originated from crime No.1666/2017 of Kodungallur Police Station. The case was investigated by the Sub Inspector of Police, Kodungallur Police Station. The charge sheet was laid by him.

4. The case had been primarily filed before the Magistrate Court as per CP 45/2023 of JFCM, Kodungallur and charge was filed against the accused on that basis. As it is found that the offence is triable exclusively by the Court of Session, the case was committed to the Sessions Court, Thrissur. It was numbered as SC 568/2023. Later, the matter was committed to this court, as this court was being constituted as the Children's Court.

5. When the accused person appeared, he had been heard on the question of framing of charge. Both the Special Public Prosecutor as well as the counsel for the accused were heard on framing of the charge. The accused appointed a lawyer of his own choice.

Point

6. The following point would arise for consideration.

1. Whether there are sufficient grounds to proceed against the accused person for the offence alleged or at least, there is grave suspicion as to commission of the offence?

The case law

7. While considering the scope of discharge, in **Sajjan Kumar v. Central Bureau of Investigation MANU/SC/0741/2010: 2010:INSC:624 : (2010) 9 SCC 368**; the Hon'ble Apex Court laid down certain guiding principles for discharge as under:

“... On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges Under Section 227 Code of Criminal Procedure has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the Accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the Accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the Accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the Accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the Accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the Accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

8. This view has been followed of late in **Karan Talwar vs. The State of Tamil Nadu MANU/SC/1372/2024** by the apex court and the law has been reiterated as follows.

7. The position of law enunciated in the said decisions would reveal that while calling upon to exercise the power Under Section 227, Code of Criminal

Procedure, the judge concerned has to consider only the record of the case and the documents produced along with the same. If on such consideration the court forms an opinion that there is no sufficient ground to proceed against the Accused concerned, he shall be discharged after recording the reasons therefore. It is also evident from the precedence on the aforesaid question that while exercising the said power, the Court could sift the materials produced along with the final report only for the purpose of considering the question whether there is ground to proceed against the Accused concerned.”

9. Therefore, this court does not intend to swift and weigh the materials produced in the touchstone of admissibility of evidence or creditworthiness of the witnesses and rather the court shall look into the materials produced with the final report for the purpose of considering whether there is ground to proceed with the section 77 of the Juvenile Justice (Care and Protection of Children) Act.

10. Going by the records that have been produced it is seen that CW1, Shajahan stated that he was present at the time of the search was done by the police. It is stated that school children wearing uniform were seen running from the waiting shed near the Fathima Saidumammed memorial while the police party flashed. The vehicle stopped by the side of the waiting shed and the Sub Inspector of police with party alighted from that, he went near to the police party. There was a search of the accused person who was found there and 70 grams of ganja was seen from his possession. The same thing is repeated by one Sainudeen, S/o Ibrahim. Another witness is Muhammadali, S/o Moosakutty. He had seen the later

part of the preparation of documents at the spot. Muhammed Rafeek is a witness to the scene mahazar. Ashish Riyad is yet another witness to the scene mahazar. Civil Police Officer Sreejith states that he had forwarded Section 42 Cr.P.C notice to the Inspector of Police, Kodungallur as instructed by the Sub Inspector. Gireesh as well as Joseph, are the Civil Police Officers including the police party and they given very detailed statements as to the search of the accused person and recovery of the narcotic substance.

11. There is generally a statement that the accused person was seen in the waiting shed near the Keralavarma Higher Secondary School, Eriyad. None of the witnesses would state, nor any documents have an allegation that the accused had been seen to be engaged in sale of ganja to the school children. The school children had not been identified. At least there should have been a statement that the accused person was seen handing over something to the school children and at the sight of the police party, the school children vanished from the locality.

12. In the absence of any such statements, simply because the school children were running from the waiting shed, there is no inference possible that the accused was engaged in sale of narcotic drugs to minor children. In such circumstances, it is only to be seen that the prosecution is not successful in proving that the accused had been engaged in sale of the contraband to the minor children. Not even by the yardstick of probability or grave suspicion can the accused be found guilty of the sale of the narcotic substance to the minor children.

13. Therefore, it is found that no charge under section 77 of the Juvenile Justice (Care and Protection of Children) Act is not attracted. For these reasons, the point is found in favour of the accused and against the prosecution.

In the result, the accused is discharged of the offence under Section 77 of the Juvenile Justice (Care and Protection of Children) Act, under section 227 Cr.P.C. Charge is framed against the accused person under section 20(b)(ii) A of the NDPS Act.

(Dictated partially to the Confidential Assistant, and partially to the appropriate dictation software, transcribed by her/it, corrected by me and pronounced in open court on this the 9th day of June, 2026).

Sd/-

K. KAMANEEES
I ADDL. SESSIONS JUDGE, THRISSUR.

Copied by : Lekshmi

Compared by : Reshma

/True copy/

By order

Sheristadar

Copy of Order in
SC 568/2023
Dated: 09.06.2026