

In the Court of the Assistant Sessions Judge, Karunagappally

Present:

Sri. Santhosh Das., Asst. Sessions Judge, Karunagappally
Monday 05th day of June, 2023/ 16th day of Jayishta, 1945.

Crl.M.P No. 1454/2022 in S.C. No.311/2021
(Crime No. 628/2011 of Chavara Police Station)

Petitioner/accused : Nishad, aged 36, S/o Aliyarukunju,
Alummoottil Thekkathil, Porukara,
Vadakkumthala.

By Sri. Adv. K.V. Vinodkumar.

Counter Petitioner : State of Kerala represented by the
Inspector of Police, Chavara PS.

By Sri. N.S. Byju, Public Prosecutor.

This petition having been heard on 29/05/2023, the Court on this day
perused the records and passed the following:-

ORDER

1. Petitioner is the 2nd accused in crime No. 628/2011 of Chavara Police Station, and his case is pending before this Court as SC 311/2021, and case against A1, 3, 4 and 5 is pending before this Court as SC 294/2017, and petitioner seeks an order for the joint trial of these two cases.
2. Going by the prosecution allegations in brief, on 08/05/2011 at 09.00 pm, accused persons, who were the activists of SDPI, due to animosity

towards CW1, who was an activist of CPI, formed themselves into an unlawful assembly armed with deadly weapons and in prosecution of their common object to kill CW1, attacked CW1, while he was near Ponvayal Auditorium, Vadakkumthala Village, and CW1 sustained grievous injuries. The offences alleged against the accused persons are u/s. 143, 147, 148 and 307 r/w 149 IPC, S. 27 of the Arms Act and S. 3 & 4 of the Explosive Substances Act.

3. The petition for joint trial is strongly objected by the Prosecutor, who filed written objection. According to the learned Prosecutor, the trial in SC 294/2017 has proceeded substantially and out of the total prosecution witnesses (18 in numbers), CW1, 3, 6,7, 9, 11, 13 and 14 are already examined, and the remaining witnesses are waiting for their turn. Now, if the petition is allowed and joint trial is done, these examined witnesses will have to be re-called for fresh examination, which would cause much hardship to those witnesses and A1, 3, 4 and 5 in SC 294/2017. It is further underlined that all the victims were examined in SC 294/2017, and their re-call will prejudice the prosecution.

4. In support of the joint trial application, learned counsel would submit

that the same is the right of the 2nd accused, whose case was committed after the committal of the case of A1, 3, 4 and 5. According to him, if separate trial is done, the same may end in conflicting judgments, and the 2nd accused would be prejudiced.

5. I have carefully heard the rival submissions and have gone through the records. In SC 294/2017, the trial has progressed much, and the evidence of the victims is already completed. Turning to SC 311/2021, the charge is yet to be framed. Now, if the joint trial is permitted, all the examined witnesses will have to be re-called and that would definitely caused unnecessary hardships to those witnesses, and the same would also delay the trial as against the accused persons in SC 294/2017, who all promptly entered appearance at the committal hearing (CP 41/16) and accordingly their case was committed at an early date namely 10/01/2017 and the trial progressed to this extent. As regards the petitioner, he had not cared to participate the committal hearing in CP 41/16, and accordingly his case was refiled as CP 02/17, which later slipped to long pending register as LP 28/18 as he absconded. It is only when the water has touched his nose that he surrendered before the Court of the Magistrate, and accordingly the case was refiled as CP 07/21 and he was enlarged on bail and his case was committed by the order dated 23/01/2021, and that case is finally made over to this Court

for trial. Therefore, petitioner cannot demand joint trial as of right.

6. Now, at any rate, petitioner cannot be heard to say that he will be prejudiced with the separate trial in SC 311/2021 in as much as he will be getting opportunity to test the evidence of all the witnesses, in that trial, and that the Court will be disposing the said case on its merits, untrammelled by the findings in SC 294/2017.

7. For the discussions above, this petition stands dismissed.

(Dictated to the C.A., transcribed and typed by her, corrected and pronounced by me in open court on this the 5th day of June, 2023)

Sd/-
Santhosh Das,
Assistant Sessions Judge.

Appendix:- Nil

Sd/-
Assistant Sessions Judge.

//True copy//

Typed by:Sini.G

Compared by:Sunilkumar.S

Assistant Sessions Judge.