

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

WEDNESDAY, THE 03RD DAY OF FEBRUARY 2021 / 14TH MAGHA,1942

Cr1.MC.No.231 OF 2021(H)

SC 216/2017 OF PRINCIPAL ASSISTANT SESSIONS COURT, NORTH
PARAVUR

CRIME NO.582/2017 OF Munambom Police Station, Ernakulam

PETITIONER/S:

- 1 JEEVAN
AGED 18 YEARS
S/O.SURAN, PAZHAMPILLY HOUSE, PALLIPPURAM,
MUNANMBAM, ERNAKULAM-683 515.
- 2 ANEESH,
AGED 26 YEARS, S/O.HARI, THEVALLIL HOUSE,
PALLIPPURAM, MUNANMBAM, ERNAKULAM-683 515.
- 3 SIJOSH,
AGED 20 YEARS
S/O.JAYAN, KANKIRATHINKAL HOUSE, PALLIPPURAM,
MUNANMBAM, ERNAKULAM-683 515.
- 4 JOYAL,
AGED 19 YEARS
S/O.JOSHI, PUTHENPADATH HOUSE, PALLIPPURAM,
MUNANMBAM, ERNAKULAM-683 515.

BY ADVS.
SRI.VISHNU BABU
SRI.P.BABU KUMAR
SRI.SOORAJ K.ABRAHAM

RESPONDENT/S:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM-682 031.

OTHER PRESENT:

SR.PP.C.S.HRITHWIK

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
28.01.2021, THE COURT ON 03.02.2021 PASSED THE FOLLOWING:

ORDER

Dated this the 03rd day of February, 2021

Petitioners are accused Nos.1 to 4 in S.C.No.216 of 2017 pending before the Principal Assistant Sessions Court, North Paravur. The case originated from Crime No.1187 of 2016 registered at the Munambam Police Station for offences punishable under Sections 143, 147, 148, 323, 324, 326 and 308 r/w 149 of IPC. The crime was registered on the allegation that, at 8.00 p.m on 04.09.2016, the accused, due to their previous enmity towards the de facto complainant (Ambros), attacked him, resulting in Ambros sustaining injuries.

2. Annexure B is the FIR in Crime No.562 of 2017 registered at the Munambam Police Station, based on the complaint of the 4th petitioner that,

Ambros along with certain others, had attacked the 4th petitioner and his friends (petitioners 1 to 3) at 8.30 p.m. on 04.09.2016 and had thereby committed offences under Sections 447, 425, 323, 324, 506 r/w 34 of IPC. The Police after investigation filed refer report in Crime No.562 of 2017. Thereupon, the 4th petitioner filed Annexure C protest complaint and the Judicial First Class Magistrate, Njarakkal took cognisance and numbered the case as C.C.No.567 of 2018.

3. Later, the petitioners filed CrI.M.P. No.224 of 2020 in S.C.No.216 of 2017 seeking simultaneous trial of the Sessions Case along with C.C.No.567 of 2018 pending before the Judicial First Class Magistrate Court, Njarakkal. The prayer was made on the ground that S.C.No.216 of 2017 and C.C.No.567 of 2018 being case and counter based on the same incident, trial of both cases

should be conducted by the Sessions Court. That petition was dismissed vide Annexure D order. The dismissal is for the reason that, the incident in S.C.No.216 of 2017 occurred at 8.00 p.m on 04.09.2016 at the property of one Franko on the Convent Kadavu- Kovilakathum Kadavu Road in Pallippuram Kara, whereas the occurrence in C.C.No.567 of 2018 was at 8.30 p.m. on 4.09.2016 at the boatyard situated on the east of Convent Kadavu. The time and place of occurrence being different, it was held that the cases cannot be termed as, 'case and counter'.

4. The learned Counsel for the petitioner, relying on the decision in Augustine v. State [1982 KLT 351], vehemently contended that minor differences in the time and place of occurrence cannot be a reason to refuse joint trial. It is contended that the second incident is the offshoot

of the first and therefore, ought to be treated as part of the same incident.

5. In Augustine, the Full Bench, after elaborately dealing with connotation of the term 'case and counter', held as follows:

“4. Before going into the propriety of the procedure canvassed by the appellants, it is desirable to deal with the connotation of the term "case and counter" which is very often used during criminal trials. The term in its general import stands for cases registered on the basis of rival versions or the same incident. Such cases need not always be registered on the basis of police reports. In respect of a particular occurrence, the police on getting information may register a case against a certain individual, say a person by name A. It may so happen that A himself sustained some injuries. A might approach the police and launch a complaint regarding his version of the occurrence and how he sustained the injuries. The two versions may be conflicting. Still the police may register a case and investigate it along with the main case already registered. After questioning witnesses the investigating officer may find that the version given by A is false. What the officer generally does is to file a charge-sheet in the main case and a refer report in the case registered

on the basis of the statement of A. A would naturally feel aggrieved by the conduct of the police. It may also happen that even though A gave a statement the police did not register a case based on his statement. In both the above contingencies A is not left without his remedy. He may present a complaint before Court setting out how, according to him, the occurrence took place and he sustained the injuries and the Magistrate may take the complaint to file and proceed with it. The main case based on the police report and that based on the complaint give conflicting versions of the same incident and are therefore described as "case and counter". In one the prosecuting agency will be the State while in the other it is the private complainant. The decision, *Achuthan v. Bappu*, 1961 KLT. 412, represents the above type. There can also be case and counter case where both the prosecuting agencies are private individuals. Thus A may sustain injuries at the hands of B and in the course of the same transaction B may sustain injuries at the hands of A. Both A and B would be having their own versions of the occurrence which would be conflicting with each other. In such cases if A and B prefer complaints against each other, those cases also come under the purview of 'case and counter.' It is now well recognised that cases and counter cases of the above type should be tried and disposed of by the same Court, trial in one being followed by the other and the judgment in both being pronounced in quick succession. The

underlying principle is that since the cases relate to the same occurrence and the witnesses in one may figure as accused in the other case and they may give conflicting versions, for grasping the real facts and for a proper appreciation of the evidence, it is always desirable that the two cases are tried by the same Court."

From a reading of the judgment, it is clear that for cases to be termed as 'case and counter', the rival versions should be based on the same incident. In the instant case, as rightly found by the learned Assistant Sessions Judge, the cases are based on two separate incidents which occurred at two different places, at different times. Therefore, even if the second incident is an offshoot of the first, the final report in the Sessions Case and the complaint in the Calender Case cannot be treated as rival versions of the same incident. Being so, the cases cannot be termed as case and counter.

6. It may also be pertinent to note that even under Section 218 Cr.P.C, the distinct offences for which the accused are charged, can be tried together only if the cases are pending before the same court. This position has been clearly laid down by the Honourable Supreme court in State of Punjab v. Rajesh Syal [AIR 2002 SC 3687]. In any event, the Assistant Sessions Judge cannot withdraw a case pending before the Magistrate court and try it along with the Sessions Case. Such power is available only to the Sessions Judge, under Section 408 Cr.P.C.

For the foregoing reasons, the challenge against Annexure-D order fails. Consequently, the Crl.M.C is dismissed.

Sd/-

V.G.ARUN
JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

- ANNEXURE A TRUE COPY OF THE FINAL REPORT IN SC
216/2017.
- ANNEXURE B TRUE COPY OF THE FIR NO.562/2017
REGISTERED BY MUNAMBAM POLICE STATION.
- ANNEXURE C TRUE COPY OF THE PROTEST COMPLAINT
FILED BEFORE HON'BLE JFCM COURT,
NJARAKKAL WHICH IS NUMBERED AS CC
567/2018 DATED 28.02.2018.
- ANNEXURE D CERTIFIED COPY OF THE ORDER IN CRL.MP
NO.224/2020 IN SC 216/2017 DATED
12.03.2020.