IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 13TH DAY OF APRIL 2023 / 23RD CHAITHRA, 1945

CRL.REV.PET NO. 837 OF 2022

CRIME NO.1656/2019 OF MUSEUM POLICE STATION, THIRUVANANTHAPURAM

AGAINST SC 595/2021 OF ADDITIONAL SESSIONS COURT-I, THIRUVANANTHAPURAM

REVISION PETITIONER/RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
COCHIN, PIN - 682031

BY SRI.S.U.NAZAR, PUBLIC PROSECUTOR

RESPONDENT/PETITIONER/ACCUSED NO.1:

SREERAM VENKITTARAMAN
S/O VENKITTARAMAN,
KRISHNALAYAM VEEDU,
HOUSE NO. 1031, 28TH WARD,
ERNAKULAM VILLAGE, KANAYANNOOR TALUK,
ERNAKULAM DISTRICT.

BY ADVS.
SRI.S.RAJEEV S
SRI.V.VINAY
SRI.M.S.ANEER
SRI.SARATH K.P.
SRI.PRERITH PHILIP JOSEPH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05.04.2023, ALONG WITH CRL.REV.PET. NO.55/2023, THE COURT ON 13.04.2023 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 13TH DAY OF APRIL 2023 / 23RD CHAITHRA, 1945

CRL.REV.PET NO. 55 OF 2023

CRIME NO.1656/2019 OF MUSEUM POLICE STATION, THIRUVANANTHAPURAM

AGAINST CRL.MP 1823/2021 & 2325/2022 IN SC NO.595/2021 OF ADDITIONAL SESSIONS COURT-I, THIRUVANANTHAPURAM

REVISION PETITIONER/PETITIONER/2ND ACCUSED:

WAFA NAJIM @ WAFA FIROZ
D/O NAJIM
REEMS HAVEN, T.C. 4/2169(3),
MARAPPALAM, KOWADIAR VILLAGE,
THIRUVANANTHAPURAM

BY ADVS.
ADV.G.RANJU MOHAN
SRI.S.SURESH
SMT.M.SANTHI
SMT.ARYA S.

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, PIN - 682031

BY SRI.S.U.NAZAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05.04.2023, ALONG WITH CRL.REV.PET. NO.837/2022, THE COURT ON 13.04.2023 PASSED THE FOLLOWING:

"C.R."

BECHU KURIAN THOMAS, J.

Crl.Rev.Pet. No.837 of 2022

&

Crl.Rev.Pet. No.55 of 2023

Dated this the 13th day of April, 2023

ORDER

In the early hours of 03.08.2019, a journalist on a motorbike was knocked down by a speeding car on the arterial road of the capital city of Kerala. The motorist Sri.K.M.Basheer was hit from behind by a motorcar, killing him almost instantaneously. The driver of the offending vehicle attempted to wriggle out of the situation by alleging that he was not driving and that the driver was a lady seated beside him. However, eyewitnesses identified a male as the person behind the wheels. Soon the driver of the car was identified as Sri.Sreeram Venkittaraman IAS - a civil service officer of Kerala cadre.

2. The police immediately reached the spot and took the driver of the car to the General Hospital, Thiruvananthapuram and thereafter commenced an investigation and later filed a charge sheet arraying

Sri.Sreeram Venkittaraman as the first accused, and the passenger in the car as the second accused. The offences under sections 304 and 201 of the Indian Penal Code, 1860 (for short ‘IPC’) and section 3(1)(2) of the Prevention of Damages to Public Property Act, 1984 (for short 'the PDPP Act') apart from sections 184, 185 and 188 of the Motor Vehicles Act, 1988 (for short 'the MV Act') were alleged to have been committed by the accused and after committal it was numbered as S.C. No. 595 of 2021 on the files of the Additional Sessions Court-I Thiruvananthapuram. Respondent in Crl.R.P. No.837 of 2022 is the first accused, while revision petitioner in Crl.R.P. No. 55 of 2023 is the second accused.

3. The prosecution alleges that the first accused was the driver and the second accused the owner of a car bearing registration No.KL-01-BM-360. According to the prosecution on 03.08.2019, at around 01.00 AM, the first accused drove the aforesaid car in an inebriated condition under the influence of alcohol through the Kowdiar-Museum road at Thiruvananthapuram with the knowledge that such act would endanger human life and dashed the vehicle against the motorbike driven by the deceased, from behind, and the driver of the bike succumbed to his injuries. The accused is thus alleged to have committed the offences.

4. Subsequently, both accused filed separate applications for discharge. While the first accused filed Crl.M.P. No.2325 of 2022, the second accused filed Crl.M.P. No.1823 of 2021. Despite the objections of

the State, the Sessions Court, by the impugned order discharged both the accused for the offences under sections 304 and 201 of the IPC, section 3(1)(2) of the PDPP Act and section 185 of the MV Act. However, the court found that there were sufficient materials to frame a charge against the first accused under sections 279 and 304A IPC apart from section 184 of the MV Act. As against the second accused, the court found materials to frame a charge under section 188 r/w section 184 of the MV Act. Since the offences mentioned above are triable by a Magistrate, the case was transferred to the court of Judicial First Class Magistrate under section 228(1)(a) of the Cr.P.C.

5. Aggrieved by the discharge of the first accused under section 304 IPC and other allied sections, the State has preferred Crl.R.P. No.837 of 2022 while the second accused has preferred Crl.R.P. No.55 of 2023 for not allowing her discharge even under section 188 of the MV Act. Though the brother of the deceased Basheer has preferred W.P.(Crl.) No.789 of 2022, seeking CBI investigation, the said writ petition was, by consensus, delinked from these two cases, to be heard separately.

6. Sri. S.U.Nazar, the learned Public Prosecutor appearing on behalf of the State, vehemently contended that the investigation had adduced sufficient materials in the form of CW1 to CW7 apart from CW29, CW74, CW75 and document No.11 to frame a charge under section 304 IPC and other offences alleged in the final report. According to the

learned Public Prosecutor, the first accused, who is a highly influential IAS officer and a medical doctor by graduation, had manipulated and prevented a laboratory test from being conducted on him to analyse his blood sample until 10.30 am. knowing fully well that the test would have revealed the alcoholic content in his blood. It was further contended that due to the delay in conducting the medical test, the presence of alcohol in his blood was not revealed, and that by itself is not a reason to discharge the accused under section 304 IPC, especially in the light of the numerous oral and documentary evidence available. The learned Public Prosecutor relied upon the decisions in **Alister Anthony Pareira v. State of Maharashtra** [(2012) 2 SCC 648], **State through PS Lodhi Colony, New Delhi v. Sanjeev Nanda** [(2012) 8 SCC 450], **Raju v. State of Kerala** (2021 (1) KLT OnLine 1092). It was further argued that while considering a discharge application, the court is not expected to consider the matter as if it is a mini-trial and that if there are prima facie materials to proceed against the accused for the offences alleged, the same is sufficient.

7. Sri.S.Rajeev, learned counsel for the first accused at the outset itself, raised an objection regarding the non-revisability of the impugned order by relying upon the decision in **Prabhakaran v Excise Circle Inspector** [(1992) 2 KLT 860]. It was also argued that the order of the learned Sessions Judge calls for no interference as it had independently addressed all the issues and came to the conclusion that there was no

material to frame a charge under section 304 IPC and had, in fact, properly relegated the matter to the Magistrate for framing charge under section 304A IPC and other connected offences. The learned counsel also asserted that except for the media projecting a case by targeting the first accused, who is a reputed civil service officer and the police playing into the hands of the media because of public pressure, there is nothing on record to frame a charge against the first accused under section 304 IPC.

8. Sri.G. Ranju Mohan, the learned counsel appearing for the revision petitioner in Crl.R.P. No.55 of 2023, submitted that the offence under section 188 of the MV Act is not attracted merely because the second accused was the owner of the vehicle driven by the first accused and that there are no materials to proceed against her for abetment of any offence.

9. The first issue to be considered is whether the impugned order is revisable or not. An order discharging an accused for certain offences will terminate the proceedings against the accused for those offences. When the discharge, as in the present case, is in respect of the only offence triable exclusively by a court of sessions, the proceedings against the accused in the Sessions Court come to an end. Therefore such an order of discharge cannot be said to be interlocutory in nature.

10. Further, in **Sanjay Kumar Rai v. State of Uttar Pradesh and**

Another (2021 SCC OnLine SC 367) the Supreme Court had held that "*the correct position of law as laid down in Madhu Limaye (supra), thus, is that orders framing charges or refusing discharge are neither interlocutory nor final in nature and are therefore not affected by the bar of Section 397(2) of CrPC.* Thus no elaborate discussion is necessary to conclude that the upholding of the objection of the accused that an offence under section 304 IPC has not been committed has resulted in the termination of the proceedings before the Sessions Court. Therefore the impugned order is certainly revisable, and the preliminary objection to the maintainability is rejected.

11. The two main questions that arise for consideration are whether there are sufficient materials to proceed against the first accused under sections 304 and 201 IPC and whether there are materials to proceed against the second accused for the offence under section 188 of the MV Act.

12. Culpable homicide not amounting to murder, when committed with the intention to cause death, falls, as is commonly referred to, under Part I of section 304 IPC. When the act is done with the knowledge that it is likely to cause death or cause such bodily injury as is likely to cause death but without the intention to cause death, the offence falls under Part II of section 304 IPC. The term 'knowledge' has been explained by courts as awareness on the part of the person concerned of the consequences of his act of omission or commission, indicating his state of mind. There can

be knowledge of the likely consequences without any intention to inflict them. Criminal culpability is determined by referring to what a person with reasonable prudence would have known as the likely consequences of his act. Rash or negligent driving on a public road with the knowledge of the dangerous character of his act, especially when he drives in an inebriated state, can fall in the category of culpable homicide, not amounting to murder, if the injured died as a result of the injuries. A person doing an act of rash or negligent driving, if aware of the risk that a particular consequence is likely to result and that result occurs, he can be proceeded against not only for the act but also for the result that ensued.

13. In the decision in **Alister Anthony Pareira v. State of Maharashtra** [(2012) 2 SCC 648], the Supreme Court observed that a person responsible for a reckless or rash or negligent act that causes death could be attributed with the knowledge of the consequence and may be fastened with culpable homicide not amounting to murder, punishable under section 304 Part II IPC if he had knowledge that his act was dangerous enough to lead to some untoward incident that can lead to death. The court also proceeded to observe that there is a presumption that a man knows the natural and likely consequences of his acts and that simply because the consequences were unforeseen, the act does not become involuntary. The court observed that each case has to be decided on its own facts. However, in cases where negligence or rashness is the

cause of death without anything more, the Supreme Court observed that section 304A might be attracted, but when the rash and negligent act is preceded with a knowledge that such an act is likely to cause death, section 304 Part II IPC can be attracted.

14. Driving vehicles after consuming alcohol can lead to temporary or partial impairment of cognitive faculties. This disability can lead to error in judgment relating to distance calculation, distinguishing objects, speed control and even other factors that are essential for safe driving. Blurred vision and delayed reaction to sudden stimuli are also known consequences of alcohol consumption. Thus, when a motor vehicle is driven after consuming alcohol, road accidents become a predictable consequence. In such a scenario, attributing knowledge to the driver of the vehicle that death can be a likely consequence of drunken driving is legally tenable.

15. In the decision in **State through PS Lodhi Colony, New Delhi v. Sanjeev Nanda** [(2012) 8 SCC 450], a new approach to motor accident cases was adopted by the Supreme Court. It was observed in paragraph 86 that "*drunken driving has become a menace to our society. Every day drunken driving results in accidents and several human lives are lost. Pedestrians in many of our cities are not safe. Late-night parties among urban elite have now become a way of life, followed by drunken driving. Alcohol consumption impairs consciousness and vision and it becomes impossible to*

judge accurately how far away the objects are. When depth perception deteriorates, eye muscles lose their precision causing inability to focus on the objects. Further, in more unfavourable conditions like fog, mist, rain, etc., whether it is night or day, it can reduce the visibility of an object to the point of being below the limit of discernibility. In short, alcohol leads to loss of coordination, poor judgment, slowing down of reflexes and distortion of vision."

16. The above mentioned observations of the Supreme Court are significant to the circumstances of the instant case. The prosecution alleges that the first accused was in a state of intoxication, as spoken to by CW2 to CW7. The doctor who first examined the first accused, as evident from document No.11, had written on the said document that there was the smell of alcohol. However, curiously, the accused was not subjected to any medical test at the said hospital and instead, even after noting the absence of any serious injuries, the first accused was referred to the Medical College. Curiously again, the police officer accompanying the first accused permitted a friend of the first accused to transfer him in his private car apparently to the Medical College Hospital. However, the first accused never reached the Medical College Hospital and instead was taken to a private hospital called MIMS Hospital, Thiruvananthapuram where, as per the statement of CW29, the nurse attached to the said hospital, first accused avoided permitting her to take a blood test until 10.30 am under one pretext or the other. By the time the blood test was taken, the sample

did not reveal the presence of alcohol.

17. It is relevant in this context to observe that facts can be proved by oral evidence as per section 59 of the Evidence Act, 1872, except, of course, the proof of contents of a document. If the oral evidence adduced inspires the confidence of the court or is worthy of credit, that evidence alone is sufficient to prove a fact.

18. For the purpose of bringing home the guilt of an accused, under section 304 IPC, based upon drunken driving and the resulting knowledge of the consequences, it is not essential, in every case, that there should be documentary evidence to prove the fact of drunkenness. If the circumstance of the case and the statement of the witnesses inspires the Court to come to a conclusion that the accused was driving the vehicle in a drunken state, in the absence of a statutory mandate for a medical report, the absence of such a report by itself need not deter the court from arriving at such a conclusion. Needless to observe, these are all matters for trial. For the present, the lookout of the court must only be to ascertain whether there are sufficient materials for the court to prima facie conclude that the accused was driving the vehicle in a drunken state to enable the framing of a charge against him.

19. The learned Sessions Judge proceeded to consider the absence of a medical test report regarding the level of intoxication as significant. In this context, it is pertinent to notice that the first accused is

an IAS officer and a medical doctor by education. The doctor who initially attended to the revision petitioner at the General Hospital, Thiruvananthapuram, despite noting that there was the smell of alcohol, did not, curiously, subject him to a medical test. Statements have been given by witnesses conveying to the said doctor even before the first accused had reached the hospital that an IAS officer, who himself is a doctor, was being brought to the hospital. Apart from the above, after referring the revision petitioner to the Medical College Hospital, the police officer permitted the first accused to be taken by a private person in a private vehicle. These circumstances raise eyebrows.

20. In the above perspective, the contention that there has been an apparent attempt on the part of the first accused to wriggle out of a timely medical test cannot be wholly ignored. After being referred to the Medical College Hospital, the first accused could not have gone to a private hospital, contrary to the reference, unless he wanted to cause the disappearance of the evidence of the alleged offence. Reckoning the above circumstances and the materials collected in support of the above prosecution case, it can be prima facie assumed that the first accused was over-speeding and was driving the vehicle after consuming alcohol and had even caused the destruction of evidence relating to the offence.

21. Absence of a medical test report may be fatal for the offence under section 185 of the MV Act. The statute mandates the requirement of

a medical report to bring home the guilt of the offence under section 185 of the MV Act. However, the absence of a medical report regarding the level of intoxication cannot be a reason for discharge under section 304 IPC if there are other materials to prima facie arrive at the conclusion that the accused was driving the vehicle after consuming alcohol.

22. On an appreciation of the above aspects arising in the case, it is evident that the materials brought out after investigation, if proven, can bring out the guilt of the first accused for the offence under section 304 and section 201 IPC. In such circumstances, the first accused cannot be discharged for the offence under section 304 and section 201 IPC. Resultantly, the discharge of the first accused for those two offences by the order impugned is improper and irregular.

23. As far as section 185 of the MV Act is concerned, as mentioned earlier, the provision insists on a medical laboratory test report. Since admittedly, a medical test was not conducted on the first accused within a reasonable time and the medical test conducted did not reveal the existence of alcohol content in the blood, the offence under section 185, as it then stood, is not attracted. It is pertinent to mention that the incident occurred on 03-08-2019, while section 185 underwent an amendment with effect from 09-08-2019 only. Prior to the amendment, only a breath analyser test report alone was legally accepted as proof of the ingredients of section 185 of the MV Act. Such a test was even never conducted.

Thus, the learned Sessions Judge was justified in discharging the first accused for the offence under section 185 of MV Act.

24. The offence under section 3(2) of the PDPP Act requires the commission of mischief in respect of public property as its main ingredient. As rightly observed by the learned Sessions Judge, the offence of mischief cannot be said to have been committed on any public property. In the above view of the matter, the order of discharge of the first accused for the offence under section 3(2) of the PDPP Act is sustained.

25. The second accused is alleged to have abetted the offence committed by the first accused. The vehicle involved in the accident bearing registration No.KL-01-BM-360 admittedly belonged to the second accused. The prosecution alleges that the second accused had committed the offence of abetment by providing the car to the first accused for driving. A perusal of the statement of witnesses and the other materials collected do not reveal any material pointing to the second accused having permitted the first accused to drive the car.

26. Section 107 IPC deals with the offence of abetment. It requires instigation or engaging in a conspiracy for doing an illegal act or intentionally aids the doing of an act or illegally omits to do an act to enable the commission of an offence. The decision in **Kashibai and Others v. The State of Karnataka** (2023 LiveLaw (SC) 149) is apposite in this context. There is not an iota of material to indicate that the second

accused had intentionally aided, instigated or conspired with the first accused to commit the offence. Providing the facility for driving a vehicle without anything more cannot amount to abetment. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding, and therefore active complicity is the gist of the offence of abetment under the third paragraph of S.107, as observed by the Supreme Court in **Shri Ram v. State of U.P** [(1975) 3 SCC 495]. Viewed in the above perspective, this Court is of the opinion that the offence of section 188 of the MV Act cannot be charged against the second accused in the nature of the materials collected by the investigation. Therefore she is entitled to be discharged for the said offence. The order of the learned Sessions Judge refusing to discharge the second accused is liable to be set aside.

In view of the above discussions, Crl.R.P No.837 of 2022 is allowed in part, by setting aside the order dated 19.10.2022 in Crl.M.P No.2325 of 2022 in S.C. No.595 of 2021 on the files of the Additional Sessions Court-I, Thiruvananthapuram, discharging the respondent therein (first accused) for the offence under section 304 IPC while confirming the order of discharge for the offences under sections 184 and 185 of the MV Act as well as that under Section 3(2) of the PDDP Act. Crl.R.P. No.55 of 2023 is allowed by setting aside the order dated 19.10.2022 in Crl.M.P No1823 of 2021 in S.C. No.595 of 2021 on the files of the Additional Sessions

Court-I, Thiruvananthapuram and the second accused shall stand discharged for the offence alleged against her.

Sd/-

BECHU KURIAN THOMAS
JUDGE

vps

APPENDIX OF CRL.REV.PET 55/2023

PETITIONER'S/S' ANNEXURES

ANNEXURE 1	**TRUE COPY OF THE FINAL REPORT IN CRIME NO 1656/2019**
ANNEXURE 2	**TRUE COPY OF THE DISCHARGE PETITION FILED BY THE REVISION PETITIONER AS CRL.M.P.NO.1823/2021 IN SC.NO.595/2021**
ANNEXURE A3	**TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT AGAINST ANNEXURE A1**
ANNEXURE A4	**THE COPY OF THE COMMON ORDER DATED 19.10.2022 WITH RESPECT TO THE ABOVE SAID CRL.M.P 1823/2021 FILED BY THIS REVISION PETITIONER/2ND ACCUSED AND CRL.M.P NO 2325/2022 FILED BY THE 1ST ACCUSED**