

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 6<sup>TH</sup> DAY OF JULY 2023 / 15TH ASHADHA, 1945

CRL.RC NO. 6 OF 2020

AGAINST SC 619/2011 OF SESSIONS COURT, PALAKKAD

CP 34/2011 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,ALATHUR

CRIME NO.333/2005 OF POLICE STATION, ALATHUR

SUO MOTU

PROCEEDINGS ON THE BASIS OF A COMMUNICATION  
RECEIVED FROM SESSIONS JUDGE, PALAKKAD  
REQUESTING TO QUASH COMMITTAL PROCEEDINGS AND  
SEEKING REMAND OF THE CASE TO THE COMMITTAL  
COURT.

RESPONDENTS/STATE & ACCUSED:

- 1 STATE OF KERALA  
REPRESENTED BY THE CIRCLE INSPECTOR OF POLICE,  
ALATHUR POLICE STATION, PALAKKAD  
(BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM - 682 031).
- 2 NISHIL  
S/O.RAMACHANDRAN, AGE 33/2011,  
PAYYAPPADU VEEDU,  
LAKKIDI, OTTAPALAM,  
PALAKKAD - 679 301  
(A7 IN CP NO.34/2011 OF JFCM COURT, ALATHUR).

SRI.VIPIN NARAYAN, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION CASE HAVING BEEN FINALLY HEARD  
ON 06.07.2023, ALONG WITH Cr1.RC NOS.7/2020, 8/2020, 9/2020  
& 10/2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 6<sup>TH</sup> DAY OF JULY 2023 / 15TH ASHADHA, 1945

CRL.RC NO. 7 OF 2020

AGAINST SC 67/2012 OF SESSIONS COURT, PALAKKAD

CP 65/2011 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,ALATHUR

CRIME NO.333/2005 OF POLICE STATION, ALATHUR

SUO MOTU

PROCEEDINGS ON THE BASIS OF A COMMUNICATION  
RECEIVED FROM SESSIONS JUDGE, PALAKKAD  
REQUESTING TO QUASH COMMITTAL PROCEEDINGS AND  
SEEKING REMAND OF THE CASE TO THE COMMITTAL  
COURT.

RESPONDENTS/STATE & ACCUSED:

- 1 STATE OF KERALA  
REPRESENTED BY THE CIRCLE INSPECTOR OF POLICE,  
ALATHUR POLICE STATION, PALAKKAD  
(BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM-682031) .
- 2 HENRY JOSE @ JOMON,  
AGED 32 YEARS, S/O.HENRY,  
KURUPPATHU VEEDU,  
KONDORPILLIKARA, HOUSE NO.15/56,  
ALANGATTU PANCHAYAT, ERNAKULAM-683511  
(A5 IN CP NO.65/2011 OF JFCM COURT, ALATHUR) .  
  
SRI.VIPIN NARAYAN, PUBLIC PROSECUTOR  
BY ADV K.V.SABU

THIS CRIMINAL REVISION CASE HAVING BEEN FINALLY HEARD  
ON 06.07.2023, ALONG WITH Crl.RC.6/2020 AND CONNECTED  
CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 6<sup>TH</sup> DAY OF JULY 2023 / 15TH ASHADHA, 1945

CRL.RC NO. 8 OF 2020

AGAINST SC 413/2016 OF SESSIONS COURT, PALAKKAD

CP 1/2016 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,ALATHUR

CRIME NO.333/2005 OF POLICE STATION, ALATHUR

SUO MOTU

PROCEEDINGS ON THE BASIS OF A COMMUNICATION  
RECEIVED FROM SESSIONS JUDGE, PALAKKAD  
REQUESTING TO QUASH COMMITTAL PROCEEDINGS AND  
SEEKING REMAND OF THE CASE TO THE COMMITTAL  
COURT.

RESPONDENTS/STATE & ACCUSED:

- 1 STATE OF KERALA  
REPRESENTED BY THE CIRCLE INSPECTOR OF POLICE,  
ALATHUR POLICE STATION, PALAKKAD,  
(BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM - 682 031)
- 2 BENNY BERNARD @ BOXER BENNY  
S/O. BERNARD, AGE 35/2011,  
PALLIPARAMBIL VEEDU, HOUSE NO.1/293 A,  
KUMBALAM PANCHAYAT, ERNAKULAM - 682 506.

SRI.VIPIN NARAYAN, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION CASE HAVING BEEN FINALLY HEARD  
ON 06.07.2023, ALONG WITH Cr1.RC.6/2020 AND CONNECTED  
CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 6<sup>TH</sup> DAY OF JULY 2023 / 15TH ASHADHA, 1945

CRL.RC NO. 9 OF 2020

AGAINST SC 665/2012 OF SESSIONS COURT, PALAKKAD

CP 5/2012 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,ALATHUR

CRIME NO.333/2005 OF POLICE STATION, ALATHUR

SUO MOTU

PROCEEDINGS ON THE BASIS OF A COMMUNICATION  
RECEIVED FROM SESSIONS JUDGE, PALAKKAD  
REQUESTING TO QUASH COMMITTAL PROCEEDINGS AND  
SEEKING REMAND OF THE CASE TO THE COMMITTAL  
COURT.

RESPONDENTS/STATE & ACCUSED:

- 1 STATE OF KERALA  
REPRESENTED BY THE CIRCLE INSPECTOR OF POLICE,  
ALATHUR POLICE STATION, PALAKKAD  
(BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM-682031)
- 2 VIPIN,  
AGED 26 YEARS, S/O. PURUSHOTHAMN,  
CHUNDANIPARAMBIL VEEDU,  
KAITHANAM P.O, NORTH PARAVUR,  
ERNAKULAM-683519  
(A1 IN CP NO.5/2012 OF JFCM COURT, ALATHUR)
- 3 KANNAN @ THYAGESH,  
AGED 30 YEARS, S/O. THYAGARAJAN,  
PADANEKATHU VEEDU,  
VADUTHALA, ERNAKULAM-682023

(A2 IN CP NO.5/2012 OF JFCM COIURT,ALATHUR)

4 SHANMUGHAM,  
AGED 29 YEARS, S/O.KANNAN PILLAI,  
CHEMBADYPARAMBU VEEDU,  
ELAMAKKARA, KOCHI-682026  
(A3 IN CP NO.5/2012 OF JFCM COURT,ALATHUR)

5 BALAKRISHNAN,  
AGED 34 YEARS, S/O VASUDEVAN,  
MARATHARA VEEDU,  
ELAMAKKARA, KOCHI-682026,  
(A4 IN CP NO.5/2012 OF JFCM COIURT,ALATHUR)

SRI.VIPIN NARAYAN, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION CASE HAVING BEEN FINALLY HEARD  
ON 06.07.2023, ALONG WITH Cr1.RC.6/2020 AND CONNECTED  
CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 6<sup>TH</sup> DAY OF JULY 2023 / 15TH ASHADHA, 1945

CRL.RC NO. 10 OF 2020

AGAINST SC 426/2011 OF SESSIONS COURT, PALAKKAD

CP 129/2007 OF JUDICIAL MAGISTRATE OF FIRST CLASS, ALATHUR

CRIME NO.333/2005 OF POLICE STATION, ALATHUR

SUO MOTU

PROCEEDINGS ON THE BASIS OF A COMMUNICATION  
RECEIVED FROM SESSIONS JUDGE, PALAKKAD  
REQUESTING TO QUASH COMMITTAL PROCEEDINGS AND  
SEEKING REMAND OF THE CASE TO THE COMMITTAL  
COURT.

RESPONDENTS/STATE & ACCUSED:

- 1 STATE OF KERALA  
REPRESENTED BY THE CIRCLE INSPECTOR OF POLICE,  
ALATHUR POLICE STATION, PALAKKAD  
(BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM-682031) .
- 2 JANARDHANAN,  
AGED 37 YEARS, S/O. RAMAKRISHNAN,  
ARIYAKKODE VEEDU,  
ERIMAYUR, ALATHUR,  
PALAKKAD-678546.  
(A1 IN CP NO.129/2007 OF JFCM COURT, ALATHUR)
- 3 ANVAR SADATH @ BAPUTTY,  
AGED 30 YEARS, S/O ABDU,

CHEERATHADAYAN VEEDU,  
VUKKANAM, MANNARKKAD,  
PALAKKAD-678582.

(A2 IN CP NO.129/2007 OF JFCM COURT, ALATHUR)

4 DEVADAS,  
AGED 32 YEARS, S/O.VELAYUDHAN,  
KALLAYAMKONAM VEEDU, CHITHALI,  
KUZHALMANNAM, PALAKKAD-678702.

(A3 IN CP NO.129/2007 OF JFCM COURT, ALATHUR)

5 SYAM,  
AGED 21 YEARS, S/O.SASI,  
PALLIKKARA VEEDU,  
OTHUNGATTUKARA, CHULISSERY,  
THRISSUR-680541

(A10 IN CP NO.129/2007 OF JFCM COURT, ALATHUR)

BY ADVS.

SMT.A.V.INDIRA

SRI.V.A.JOHNSON (VARIKKAPPALLIL)

SRI.AKHIL RAJ

SRI.AKHIL GEORGE

SMT.LIYA ELZA ALEX

SRI.GAJENDRA SINGH RAJPUROHIT

THIS CRIMINAL REVISION CASE HAVING BEEN FINALLY HEARD  
ON 06.07.2023, ALONG WITH Cr1.RC.6/2020 AND CONNECTED  
CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**"C.R."**

**BECHU KURIAN THOMAS, J.**

-----  
**Crl.R.C. Nos.6, 7, 8, 9 & 10 of 2020**  
-----

Dated this the 6<sup>th</sup> day of July, 2023

**ORDER**

Is it mandatory to examine an accused who was tendered pardon under section 306(4)(a) of the Code of Criminal Procedure, 1973? What is the effect of failure to examine an approver prior to the committal in a sessions case? These are the questions which require an answer in this suo motu revision petition. Incidentally, from the contentions advanced by one of the learned counsel, the question of whether the order of committal being an interlocutory order can be interfered with under the suo motu revisional power of the High Court also arises for consideration.

2. The aforementioned questions arise in five cases under S.C. No.426/2011, S.C. No.619/2011, S.C. No.67/2012, S.C. No.665/2012 and S.C. No.413/2016 on the files of the Sessions Court, Palakkad.



3. Prosecution alleged that pursuant to a criminal conspiracy hatched between accused 1 to 11, they formed themselves into an unlawful assembly and attacked one Tilakan on 26.07.2005, who succumbed to the injuries. Prosecution further alleged that the first accused and second accused had nurtured a business rivalry and conspired with and hired the other accused to execute their plan. The deceased died on 31.07.2005 while undergoing treatment, and the accused hereby committed the offences alleged.

4. After the investigation, a final report was filed, and the case was considered as C.P. No.129 of 2007 on the files of the Judicial First Class Magistrate's Court, Alathur. While the case was pending for committal to the Sessions Court, the Crime Branch obtained permission for further investigation. During further investigation, third accused came forward to become an approver and therefore, the Crime Branch filed an application before the Chief Judicial Magistrate, Palakkad (for short 'CJM') to tender pardon to the said accused under section 306 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C'). The CJM allowed the said application and directed the investigating officer to

examine the said approver as a witness, as mandated under section 306(4)(a) of Cr.P.C.

5. However, without taking note of the said requirement and the direction to examine the approver under section 306(4) (a) as a witness, the learned Magistrate on 12-07-2011 in C.P. No.129 of 2007, committed the case against A1, A2 and A10 to the Sessions Court. The third accused was deleted from the array of accused while the proceedings for committal against the remaining accused i.e. accused 4 to 9 and 11, were split up and refiled as C.P. No. 34 of 2011. After the committal, the case was numbered as S.C. No.426 of 2011 of the Sessions Court, Palakkad. In the meantime, the case against the remaining accused, except the third accused, were also committed to the Court of Sessions under different committal proceedings as C.P. No.65 of 2011, C.P. No.34 of 2011, C.P. No.5 of 2012 and C.P. No.1 of 2016. Those cases were renumbered by the Sessions Court, Palakkad, as S.C. No.619 of 2011, S.C. No.67 of 2012, S.C. No.665 of 2012 and S.C. No.413 of 2016.

6. When the cases came up for trial, the third accused, being an approver was cited as CW2 to be examined. The defence raised an objection pointing out that the non-

examination of the approver before committing the case to the Sessions Court has vitiated the order of committal since the mandatory provision under section 306 of Cr.P.C had not been followed. Immediately, the prosecution filed a petition as Crl.M.P. No.1367 of 2015 seeking a reference of the matter to the High Court of Kerala under section 395 of Cr.P.C to quash the orders of committal in all the cases. Despite the objection of the accused, the Sessions Court allowed the application and referred the matter to the High Court, as mentioned above.

7. When the reference came up before this Court, it was noticed that the provisions of section 395 Cr.P.C may not strictly apply in the matter. Therefore, suo motu revisions were taken by this Court, and thus cases arise for consideration

8. I have heard Sri.K.V.Sabu, Smt.A.V.Indira as well as Sri.Vipin Narayan, the learned Public Prosecutor.

9. The questions mentioned at the beginning of this order will have to be answered with reference to section 306 Cr.P.C. For the purpose of a proper understanding, the said section is extracted below:

**306. Tender of pardon to accomplice.**-(1) *With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.*

*(2) This section applies to-*

*(a) any offence triable exclusively by the Court of Session or by the Court of a Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952 );*

*(b) any offence punishable with imprisonment which may extend to seven years or with a more severe sentence.*

*(3) Every Magistrate who tenders a pardon under sub-section (1) shall record-*

*(a) his reasons for so doing;*

*(b) whether the tender was or was not accepted by the person to whom it was made, and shall, on application made by the accused, furnish him with a copy of such record free of cost.*

*(4) Every person accepting a tender of pardon made under sub-section (1)-*

*(a) shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any;*

*(b) shall, unless he is already on bail, be detained in custody until the termination of the trial.*

*(5) Where a person has accepted a tender of pardon made under sub-section (1) and has been examined under sub-section (4), the Magistrate taking cognizance of the offence shall, without making any further inquiry in the case,-*

*(a) commit it for trial-*

*(i) to the Court of Session if the, offence is triable exclusively by that Court or if the Magistrate taking cognizance is the Chief Judicial Magistrate;*

*(ii) to a Court of Special Judge appointed under the Criminal Law Amendment Act, 1952 (46 of 1952), if the offence is triable exclusively by that Court;*

*(b) in any other case, make over the case to the Chief Judicial Magistrate who shall try the case himself."*

10. The above provision empowers a Magistrate, at any stage of the investigation, inquiry or trial of an offence, to tender a pardon to a person. A pardon can be tendered for the purpose of obtaining his evidence and on condition of him making a full and true disclosure of the whole of the circumstances within his knowledge relating to the offence under consideration, with a view to obtaining the evidence of that person. The Magistrate who tenders a pardon must record his reasons for so doing and also furnish a copy to the accused and every person accepting a tender is to be examined in the court of the Magistrate as well as in the subsequent trial, if any.

11. The provision for pardon has been incorporated by the legislature to ensure that grave offences do not go unpunished. The application of the provision is confined to cases specifically mentioned in the provision. Reference to the decision in **Bawa**

**Faqir Singh v. Emperor** (AIR 1938 PC 266) is relevant in this context. The secrecy of the crime, the difficulty in obtaining circumstances related to the manner in which the crime was committed, and eliciting evidence which otherwise may be impossible are some of the reasons that necessitate recourse to such a procedure.

12. As mentioned earlier, once the Magistrate decides to grant pardon on the basis of the approver agreeing to depose the truth of the offences alleged, he must be examined both by the Magistrate, taking cognizance of the offence as well as in the subsequent trial. This procedure is mandatory, as is evident from the decision in **State (Delhi Administration) v. Jagit Singh** [1989 Supp (2) SCC 770] wherein it is observed that the provision casts an obligation on the prosecution to examine the approver both in the committing court as well as in the trial court.

13. As per sub-section (4) of section 306, every person accepting a tender of pardon shall be examined as a witness in the Court of the Magistrate taking cognizance as well as in the subsequent trial. The object of such an examination is to ascertain whether he has resiled from his former position and

has broken the conditions of his pardon. On the above principles, it was authoritatively held that examination under section 306(4)(a) Cr.P.C is compulsory and the examination of questioning at the time of tendering a pardon is not a substitute for it. This Court has also observed in **Suo Motu Edward John and Others** (2009 4 KHC 776) as well as in **In Re: Chief Judicial Magistrate, Trivandrum** (1988 KHC 1307) that examination of an accused who has tendered pardon under section 306(4)(a) of Cr.P.C is mandatory. Therefore it is evident that the person accepting the tender of pardon ought to have been examined by the Magistrate before accepting him as an approver.

14. In the instant case, it is evident that the Magistrate has failed to examine the approver under section 306(4)(a) Cr.P.C before committing the case to the Court of Sessions. The said fact came to the knowledge of the trial court only at the time of the commencement of trial, when the examination of CW2-the approver, was objected to by the defence. The case was committed by the learned Magistrate without arraying the third accused, as he had already accepted him as an approver. Without examining the person accepting the tender of pardon as

a witness, the Magistrate could not have committed the case to the Sessions Court, excluding that person from the array of accused. Such a process is without authority and is irregular. If the learned Magistrate intended to commit the case for trial to the Sessions Court, either all persons mentioned in the final report should have been arrayed as accused or if any person was offered pardon and he accepted it, then he could have been omitted from the list of accused only after his examination by the Magistrate. If any of the accused was accepted as an approver, then that person should have been examined before committing the case to the Sessions Court treating him as an approver. The principles laid down in **Randhir Basu v. State of West Bengal** (2000 KHC 502) as well as the decisions in **Asokan L.S. v. State of Kerala** (2005 KHC 957) and **State of Maharashtra v. Narendra G.Goyal and Others** (2016 KHC 4187) are also relevant in this context.

15. Adv.A.V.Indira contended that the order of committal is not a revisable order as it is an interlocutory order and hence this Court cannot interfere even under the suo moto powers. Though the contention was impressive at first blush, on a deeper analysis, it is rejected. Normally, the discretion in the exercise of



revisional jurisdiction under section 401 Cr.P.C should be exercised within the four corners of section 397 Cr.P.C. However, when the suo moto powers are exercised, the High Court exercises a plenary jurisdiction. Coupled with the powers under section 482 Cr.P.C, the High Court can, in exercise of its suo moto powers, rectify illegalities. Where the conscience of the court is satisfied that in the broad interests of justice, the High Court must exercise its suo moto jurisdiction to correct illegalities, limitations including those in the nature of the impugned order being interlocutory, cannot be an obstacle. Unless such wide powers are read into the suo moto powers of the High Court, illegalities will continue to remain on the record even after they come to the notice of the court.

16. In this context, the observation of the Supreme Court in **Municipal Corporation of Delhi v. Girdharilal Sapuru and Others** (AIR 1981 SC 1169), is significant. In the said case, based on a judgment, a Magistrate discharged the accused, who were being prosecuted under the Prevention of Food Adulteration Act, 1954. However, later, the said judgment was reversed. The challenge against the order of discharge was dismissed by the High Court on the ground of limitation. While reversing the

order of the High Court, it was observed by the Supreme Court, of course, as an obiter dicta, that *"if the High Court exercises suo motu revision power the same cannot be denied on the ground that there is some limitation prescribed for the exercise of the power because none such is prescribed".* (emphasis supplied). Bearing in mind the principle that even an obiter dictum of the Supreme Court is binding on the High Courts, it is held that there are no limitations in the exercise of the suo moto powers of revision of the High Court.

17. In view of the above discussion, it is amply clear that:

(i). An accused who was tendered pardon under section 306(4)(a) Cr.P.C must be mandatorily examined before committing the case to the Sessions Court.

(ii). When there is a failure to examine an approver by the Magistrate prior to committing the case to the Sessions Court, it is illegal to omit that approver from the array of accused.

(iii). There are no limitations in the exercise of the suo moto powers of revision of the High Court, and ex-facie illegal orders can be interfered with when it

comes to its notice.

18. Having regard to the above circumstances, this Court is of the considered view that the orders of committal in C.P No. 129 of 2007, C.P. No.65 of 2011, C.P. No.34 of 2011, C.P. No.5 of 2012 and C.P. No.1 of 2016, all on the files of the Judicial First Class Magistrate's Court, Alathur to the Court of Sessions after tendering pardon to the third accused, is illegal and are liable to be set aside. Ordered accordingly.

19. The learned Sessions Court shall forthwith transmit the case records to the committal court, who shall comply with the provisions of section 306(4)(a) Cr.P.C and thereafter consider the case for committal afresh.

The suo motu criminal revision cases are allowed as above.

Sd/-  
**BECHU KURIAN THOMAS**  
**JUDGE**

vps

/True Copy/

PS to Judge