

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K. BABU

MONDAY, THE 1ST DAY OF AUGUST 2022 / 10TH SRAVANA, 1944

CRL.REV.PET NO.161 OF 2022

AGAINST THE ORDER/JUDGMENT CRMP 28/2022 OF SPE/CBI COURT,

TRIVANDRUM

CC 2/2012 OF SPE/CBI COURT, TRIVANDRUM

REVISION PETITIONER/ACCUSED NO.2:

RENJITH PANNACKAL,
AGED 47 YEARS,
SON OF P.K.ITTIKUNJU, SREYAS HOUSE,
AYMANAM.P.O, KOTTAYAM, KERALA, PIN - 686008
BY ADV V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
- 2 CENTRAL BUREAU OF INVESTIGATION (CBI),
SPECIAL CRIME BRANCH, TC 25/427,
SHANTHI NAGAR, "ASHWINI",
THIRUVANATHAPURAM.
REP.BY SUPERINTENDENT OF POLICE,
CBI/SPE/THIRUVANANTHAPURAM, PIN - 695001

BY ADVS.
SMT.REKHA S (PP)
SR.RAJESH A (SPECIAL PP)
MANU S., ASG OF INDIA
SRI. SUVIN R. MENON CGC

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 01.08.2022, ALONG WITH Crl.Rev.Pet.160/2022, 162/2022, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 1ST DAY OF AUGUST 2022 / 10TH SRAVANA, 1944

CRL.REV.PET NO. 160 OF 2022

AGAINST THE ORDER/JUDGMENT CRMP 27/2022 OF SPE/CBI COURT,

TRIVANDRUM

CC 4/2012 OF SPE/CBI COURT, TRIVANDRUM

REVISION PETITIONER:

RENJITH PANNACKAL,
AGED 47 YEARS,
SON OF P.K.ITTIKUNJU, SREYAS HOUSE,
AYMANAM.P.O, KOTTAYAM, KERALA, PIN - 686008
BY ADV V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
- 2 CENTRAL BUREAU OF INVESTIGATION (CBI),
SPECIAL CRIME BRANCH, TC 25/427,
SHANTHI NAGAR, "ASHWINI",
THIRUVANATHAPURAM.
REP.BY SUPERINTENDENT OF POLICE,
CBI/SPE/THIRUVANANTHAPURAM, PIN - 695001

BY ADVS.
SMT.REKHA S (PP)
SR.RAJESH A (SPECIAL PP)
MANU S., ASG OF INDIA
SUVIN R MENON CGC

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 01.08.2022, ALONG WITH Crl.Rev.Pet.161/2022
AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 1ST DAY OF AUGUST 2022 / 10TH SRAVANA, 1944

CRL.REV.PET NO. 162 OF 2022

AGAINST THE ORDER/JUDGMENT CRMP 26/2022 OF SPE/CBI COURT,

TRIVANDRUM

CC 3/2012 OF SPE/CBI COURT, TRIVANDRUM

REVISION PETITIONER:

RENJITH PANNACKAL,
AGED 47 YEARS,
SON OF P.K.ITTIKUNJU, SREYAS HOUSE,
AYMANAM.P.O, KOTTAYAM, KERALA, PIN - 686008
BY ADV V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
- 2 CENTRAL BUREAU OF INVESTIGATION (CBI),
SPECIAL CRIME BRANCH, TC 25/427,
SHANTHI NAGAR, "ASHWINI",
THIRUVANATHAPURAM.
REP.BY SUPERINTENDENT OF POLICE,
CBI/SPE/THIRUVANANTHAPURAM, PIN - 695001
BY ADVS.

SMT.REKHA S (PP)
SR.RAJESH A (SPECIAL PP)
MANU S., ASG OF INDIA
SRI.SUVIN.R.MENON, CGC

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 01.08.2022, ALONG WITH Crl.Rev.Pet.161/2022
AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

K.BABU, J.

Criminal R.P Nos.160, 161, 162 of 2022

Dated this the 1st day of August, 2022

ORDER

Would the proceedings as provided in Section 240 of the Code of Criminal Procedure culminate in an order framing charge before the plea of the accused is taken? This is the short question raised before me in these Criminal Revision Petitions.

2. The Revision Petitioner is alleged to have committed various offences punishable under the Prevention of Corruption Act, 1988 and the Indian Penal Code.

3. The Revision Petitioner challenged the final report by filing Crl.M.C. Nos.167/2022, 155/2022 and 158/2022 before this Court. As per common order dated 15.02.2022 this Court directed the Court below as follows:

“Accordingly, the criminal miscellaneous cases are closed, without advertent to any contentions on merit, leaving the right open to the petitioner to seek discharge before the court below, if the charges are not framed. If such application is filed before the next posting date as above, the court below may consider it and pass orders thereon in accordance with law.”

4. Thereafter, the Revision Petitioner filed Crl.M.P.Nos.27/2022,

28/2022 and 26/2022 seeking discharge before the Court below. The Court on 21.02.2022 passed the following order in the applications:

“Charge has been framed on 31.01.2022, hence this petition stands disposed of as per the order of the Honourable High court of Kerala in Crl.M.C.....”

The orders dated 21.02.2022 disposing of the Crl.M.Ps as above are under challenge before this Court.

5. The learned counsel submitted that the Revision Petitioner was not given sufficient opportunity of hearing. It is further submitted that the proceedings of the Court below under Section 240 of the Cr.P.C have not culminated in an order framing charge as the plea of the Revision Petitioner has not been taken.

6. The learned Central Government Counsel appearing for the CBI contended that as the first part of Section 240 Cr.PC is over, the process of framing of charge has become final and what is left is recording of the plea of the accused, a formality in which the accused is asked whether he pleads guilty of the offence charged or not.

7. Section 240 of the Cr.PC reads thus:

“240. Framing of charge. (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this

Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

8. The learned Central Government Counsel contended that the construction of Section 240 Cr.PC by applying the golden rule of interpretation would lead to the conclusion that once the Court decides to frame charge and the charge is framed in writing, the process of framing of charge is over. It is further submitted that the procedure provided in sub-section (2) of Section 240 Cr.PC is an independent procedure to be undertaken after the framing of charge.

9. The learned Central Government Counsel argued that the word 'then' in sub-section (2) of Section 240 Cr.PC makes it clear that the process of framing of charge is confined to sub-section (1) of Section 240 Cr.PC.

10. The learned counsel for the Revision Petitioner, per contra, contended that the act of framing of charge by the Court is completed only after the plea of the accused is taken.

11. The proceedings under Sections 239 and 240 of the Cr.PC

are to be read together. In these proceedings, the Court considers the police reports and the documents placed before it under Section 173 Cr.PC and makes such examination, if any, of the accused and gives the prosecution and the accused an opportunity of being heard. If the Court considers the charge against the accused to be groundless, the Court passes an order of discharge under Section 239 Cr.PC. If the Court is of the opinion that there is ground that the accused has committed the offence, the Court passes an order framing charge against the accused under Section 240 Cr.PC. While passing an order of discharge under Section 239 Cr.PC, the Court shall give detailed reasons. In the case of passing an order framing charge, the Court need not assign detailed reasons.

12. As per sub-section (1) of Section 240 Cr.PC, once the Court forms an opinion that there is ground for presuming that the accused has committed an offence, the Court shall frame in writing a charge against the accused. As per sub-section (2) of Section 240 Cr.PC, the charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

13. While constructing Section 240 Cr.PC, sub-sections (1) and (2) are to be read together. The proceedings in Section 240 of the Cr.P.C culminate in an order framing charge when the charge is read over and explained to the accused and the plea of the accused as to whether he pleads guilty of the offence or claims to be tried is taken. The presence of the accused is required at this stage. Form No.32 provided in the second schedule of the Cr.PC, 1973, fortifies this view. Form No.32 reads thus:

“(1) (a) I,(name and office of Magistrate, etc.),hereby charge you (name of accused person) as follows:—

(b)-That you, on or about theday of at, and thereby committed an offence punishable under section of the Indian Penal Code, and within the cognizance of this Court.

(c) And I hereby direct that you be tried by this Court on the said charge.

(Signature and seal of the Magistrate)”

14. A meaningful interpretation of Section 240 of the Cr.P.C is that the proceedings culminate in an order framing charge only after the plea of the accused is taken as per sub-section (2) of Section 240 Cr.PC. If Section 240 Cr.PC is interpreted in such a

manner that even before taking the plea of the accused there is an order framing charge, it will defeat the very purpose of sub-section (2) of Section 240 Cr.PC. The decision of the Apex Court in **HDFC Bank Ltd. v. J.J. Mannan @ J.M. John Paul and Another** (AIR 2010 SC 618) supports this view.

15. Admittedly, the plea of the Revision Petitioner was not recorded on 31.01.2022. What is discernible from the record (Annexure 1) is that the Court formed an opinion to frame charge against the accused.

16. As per order dated 15.02.2022 this Court permitted the Revision Petitioner to seek discharge before the Court below if charges were not framed. As per the impugned order, the Court disposed of those petitions holding that charge had already been framed on 31.01.2022. The proceedings dated 31.01.2022 had not culminated in an order framing charge.

17. The learned counsel for the Revision Petitioner submitted that no opportunity was given to the Revision Petitioner to challenge the charge. The learned Central Government Counsel, per contra, contended that sufficient opportunity was given to the Revision

Petitioner. The impugned order does not say that the Revision Petitioner was given an opportunity of being heard.

18. The materials placed before the Court lead to the conclusion that as far as the petitioner is concerned, no meaningful hearing as provided in Sections 239 and 240 of the Cr.P.C was conducted by the Court below. This Court had given the Revision Petitioner an opportunity to seek discharge before the Court below if charges were not framed. This Court has held that the proceedings in the Court below have not culminated in an order framing charge. Therefore, the Revision Petitioner is entitled to seek discharge before the Court below. Therefore, the Court below is directed to dispose of Crl.M.P.Nos.27/2022, 28/2022 and 26/2022 within a period of two weeks from this day.

The Criminal Revision Petitions are disposed of as above.

Sd/-
K.BABU,
JUDGE

APPENDIX OF CRL.REV.PET 160/2022

PETITIONER ANNEXURES

Annexure1 TRUE COPY OF THE E-COURTS PROCEEDINGS IN
C.C.NO.4/2012 OF THE COURT OF SPECIAL
JUDGE (SPE/CBI), THIRUVANANTHAPURAM
DATED 31.01.2022

Annexure2 TRUE COPY OF THE ORDER IN
CRL.M.C.NO.167/2022 OF THIS HON'BLE
COURT DATED 15.02.2022

APPENDIX OF CRL.REV.PET 162/2022

PETITIONER ANNEXURES

Annexure1	TRUE COPY OF THE E-COURTS PROCEEDINGS IN C.C.NO.3/2012 OF THE COURT OF SPECIAL JUDGE (SPE/CBI), THIRUVANANTHAPURAM DATED 31.01.2022
Annexure2	TRUE COPY OF THE ORDER IN CRL.M.C.NO.158/2022 OF THIS HON'BLE COURT DATED 15.02.2022

APPENDIX OF CRL.REV.PET 161/2022

PETITIONER ANNEXURES

Annexure1	TRUE COPY OF THE E-COURTS PROCEEDINGS IN C.C.NO.2/2012 OF THE COURT OF SPECIAL JUDGE (SPE/CBI), THIRUVANANTHAPURAM DATED 31.01.2022
Annexure2	TRUE COPY OF THE ORDER IN CRL.M.C.NO.155/2022 OF THIS HON'BLE COURT DATED 15.02.2022