

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

Crl.MC.No. 2363 of 2015 ()

**AGAINST THE ORDER/JUDGMENT IN CC 818/2013 of J.M.F.C.,TALIPARAMBA
CRIME NO. 199/2013 OF PAYYAVOOR POLICE STATION , KANNUR**

PETITIONER(S)/ACCUSED 2 AND 3:

**1. SHYNI MOOLAYIL AGED 38 YEARS
W/O.BINOY, MOOLAYIL HOUSE, KANDAKASSERI
PAYYAVOOR P.O., PAYYAVOOR AMSOM
KANNUR DISTRICT-670633.**

**2. SUNI
W/O.BINOY, MUNDYAMPARAMBIL HOUSE, KANDAKASSERI
PAYYAVOOR P.O., PAYYAVOOR AMSOM
KANNUR DISTRICT-670633.**

**BY ADVS.SRI.V.T.MADHAVANUNNI
SRI.J.ABHILASH**

RESPONDENT(S)/COMPLAINANT:

**STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA AT ERNAKULAM
THROUGH S.H.O.PAYYAVOOR POLICE STATION
KANNUR DISTRICT.**

BY PUBLIC PROSECUTOR SRI.C.RASHEED

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21-05-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.M.C.No. 2363/2015

APPENDIX

PETITIONER(S)' EXHIBITS

Anx. A1. COPY OF THE PETITION IN CMP NO.1116/2015 ON THE FILE OF J.F.C.M., COURT, TALIPARAMBA.

RESPONDENT(S)' EXHIBITS:

NIL.

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P.S. to Judge

ALEXANDER THOMAS, J.

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Crl.M.C.No. 2363 of 2015

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Dated this the 21st day of May, 2015

ORDER

The above Criminal Miscellaneous Case has been filed with the following prayers:

“..... to quash Annexure A1 order in C.M.P. No.1116/2015 passed by the J.F.C.M. Court, Taliparamba and grant permission to plead guilty by allowing C.M.P. No.1116/2015 on the file of the J.F.C.M., Court, Taliparamba.

2. The petitioners herein are accused 2 and 3 in Calendar Case, C.C.No.818/2013 pending on the file of the Judicial First Class Magistrate's Court, Taliparamba, pertaining to Crime No.199/2013 of Payyavoor Police Station, Kannur district. The offences involved in this case are those under Secs.447, 427 read with Sec.34 of the IPC. The gist of the prosecution case is that on 5.6.2013 at 1.30 p.m. the accused persons trespassed into the property of the defacto complainant and destroyed the wall of that property and thereby caused loss of Rs.500/- to the defacto complainant. According to the petitioners, they had appeared before the court below and pleaded not guilty on 26.3.2014. Now as both the petitioners are

women, that the 1st petitioner has now got an employment opportunity at Cypress and she has to renew her passport for going abroad, the petitioners do not now want to proceed with the trial of the case on merits and according to them, they are ready to plead guilty. So the petitioners filed a petition to permit them to plead guilty before the court below as per Criminal Miscellaneous Petition No.1116/2015. But the court below dismissed said CrI.M.P.No. 1116/2015 on 9.2.2015. According to the petitioners, the said order is not legally sustainable and it is illegal and perverse and that the petitioners have every right to opt not to contest the case on merits and to plead guilty, as this would not cause any prejudice to the prosecution, who themselves are insisting that the petitioners are guilty.

3. It is further pointed out that it has been held in the decisions of this Court as in *Santhosh v. State of Kerala* reported in 2003 (1) KLT 795, that the accused can withdraw his claim to contest the trial on merits and plead guilty at any time during the trial. The petitioners would also rely on the decision of the Apex Court in *State of Maharashtra v. Sukhdev Singh and another* reported in (1992) 3 SCC 700, wherein it has been held that on the

accused pleading guilty, conviction can be founded upon confession/admission of guilt made by the accused at any stage of the trial including the stage of making statement under Sec.313 and that while acting upon the plea of guilt of the accused, court must approach with caution and circumspection to ensure that the plea is clear and unqualified and the admission of the facts constitutes the offences, etc. It is in the light of these aspects that the petitioners have preferred the present Criminal Miscellaneous Case.

4. Heard Sri.V.T.Madhavanunni, learned counsel appearing for the petitioners and Sri.T.S.Asaf Ali, learned State Prosecutor instructed by Sri.C.Rasheed, learned Government Pleader appearing for the respondent–State of Kerala in this case.

5. This Court in the case Santhosh v. State of Kerala reported in 2003 (1) KLT 795 has held that there is no specific provision in the Cr.P.C. enabling the court to permit an accused to withdraw his claim to be tried and convict him on a plea of guilty rendered subsequently. But that there is no prohibition in the Cr.P.C. to record the plea of guilty in the course of trial and convict the accused on his subsequent admission of guilt. The object of trial is to investigate the offence and to find out the truth. When the guilt is

admitted by the accused and the admission is found to be voluntary, there is no reason why the court should not allow him to withdraw his claim to be tried and plead guilty and that there is no reason to restrict the applicability of Sec.229 of the Cr.P.C. to a particular date or occasion, but the purport of the section is obvious that plea of guilt can be advanced by an accused at any stage of the trial after framing charge.

6. The aforementioned decision of this Court in Santhosh's case reads as follows:

"Is it open to an accused to withdraw his claim to be tried and plead guilty in the course of the trial? That is the question involved in this case.

2. The petitioner is the accused in S.T. 2722/1998 on the file of the Judicial First Class Magistrate Court, Adoor. He is alleged to have committed the offences punishable under S. 289 IPC and S.185 of the Motor Vehicles Act. When the charge was read over and explained to the petitioner, he pleaded not guilty. Thereupon the learned Magistrate posted the case for trial. Thereafter the petitioner moved an application before the lower court requesting the court to read over the charge once again in order to enable him to plead guilty. The learned Magistrate by the impugned order dismissed the petition

3. The learned counsel for the petitioner strongly contended that an accused is entitled to withdraw his claim to be tried and plead guilty at any stage of the trial. She further contended that there is nothing in the Cr.P.C. to prevent the court from recording the plea of guilty and convict the accused if the plea is found to be voluntary.

4. No doubt, there is no specific provision in the Cr.P.C. enabling the court to permit an accused to withdraw his claim to be tried and convict him on a plea of guilty subsequently. But as contended by the learned counsel for the petitioner, there is also no prohibition in the Cr.P.C. to record the plea of guilty in the

course of trial and convict the accused on his subsequent admission of guilt. The object of trial is to investigate the offence and to find out the truth. When the guilt is admitted by the accused and the admission is found to be voluntary, there is no reason why the court should not allow him to withdraw his claim to be tried and plead guilty. In this connection it is relevant to note the decision of the Patna High Court in *Shyama Charan Bharthuar and Ors. v. Emperor* (AIR 1934 Patna 330). It was held in that case that there is no implication that when an accused in the course of the trial withdraws his claim to be tried and plead guilty, the court is not entitled to record the plea either accept it or continue the trial. An identical question came up for consideration before the Allahabad High Court in *Ram Kishun v. State of U.P.* (1996 CrL. LJ. 440). The Allahabad High Court held that a plea of guilt can be taken at any stage of trial after framing charge. The court observed that the necessity of evidence would arise only if and when the charge is not accepted. There is no reason to restrict the applicability of S. 229 of the Cr.P.C. to a particular date or occasion but the purport of section is obvious that plea of guilt can be advanced by an accused at any stage of the trial after framing charge. If an accused is allowed to withdraw his claim to be tried and plead guilty, an earlier termination of the trial can be secured and wastage of the precious time of the court can be avoided.

5. For the reasons stated above, I set aside the impugned order and direct the Magistrate to give a further opportunity to the petitioner to plead guilty."

7. The Supreme Court in the case *State of Maharashtra v. Sukhdev Singh and another* reported in (1992) 3 SCC 700, has held that on the accused pleading guilty, his conviction can be founded upon confession or admission of guilt made by the accused at any stage including the stage of making statement under Sec.313 and while acting upon the plea of guilt of the accused, court must approach with caution and circumspection to ensure that the plea is clear and unqualified and the admission of facts constitutes the

offence, etc.

8. Both sides also point out that the Parliament had later amended the provisions of Cr.P.C. so as to incorporate provisions in Chapter 21 thereof, which provides for express provisions in the court for entertaining the plea bargaining and that this amendment made effective in the Code of Criminal Procedure with effect from 5.7.2006 would also clearly indicate the will of the Legislature that there is no embargo for entertaining such plea at any subsequent stage and that such plea could be entertained. In this view of the matter, the order dated 9.2.2015 passed by the Judicial First Class Magistrate's Court, Taliparamba, on CrI.M.P.No.1116/2015 in C.C.No. 818/2013 stands set aside. The matter is remitted to the court below. Both the petitioners will appear before the court below without any further delay and it is open to them to seek the option of plead guilty before the court below, upon which, the court below will consider the same and pass orders in the light of the principles laid down in the aforementioned reported decisions. The court below will also take into consideration that both the petitioners are women and one of them aspires to go abroad urgently in seek of employment.

With these observations and directions, the Crl.M.C. stands finally disposed of.

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Sd/-
ALEXANDER THOMAS, JUDGE

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P.S. to Judge