

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

Crl.MC.No. 3539 of 2015

CRIME NO. 565/2005 OF ERNAKULAM CENTRAL POLICE STATION , ERNAKULAM

PETITIONER(S)/ACCUSED:

1. FRANCY, AGED 55 YEARS
S/O.INNAS, KUNNATHU KIZHAKKATHIL, KOYIVILA P.O.
KARUNAGAPPALLY, KOLLAM.
2. JOSEPH, AGED 31 YEARS,
S/O.FRANCIS, KUNNATHU KIZHAKKATHIL, KOYIVILA P.O.
KARUNAGAPPALLY, KOLLAM.
3. JOSEPH, AGED 47 YEARS,
S/O.GEORGE, KORAVANTHAYATH THEKKATHIL, KOYIVILA P.O.
KARUNAGAPPALLY, KOLLAM.
4. FRANCY, AGED 40 YEARS,
S/O.GEORGE, MUTTAKKUVILA, KOYIVILA P.O.
KARUNAGAPPALLY, KOLLAM.
5. FRANCIS AGED 63 YEARS,
S/O.XAVIER, KUZHAKKATT THAKKATHIL, THEVALAKKARA, KOLLAM.
6. RAJU, AGED 53 YEARS
S/O.AUGUSTIAN, VALIKKATTILVILA, VADAKKUM BHAGAM
CHAVARA SOUTH, KOLLAM.
7. YESUDAS, AGED 63 YEARS,
S/O.XAVIER, CHERUPUZHA BHAVAN, KOYIVILA.P.O., KOLLAM.

**BY ADVS.SRI.SHERRY J. THOMAS
SRI.ARUN ALEX**

RESPONDENT(S)/DEFACTO COMPLAINANT:

**STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY SRI.TOM JOSE PADINJAREKARA, ADDL.DGP

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 07-08-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A1- THE COPY OF THE FIR IN CRIME NO.565/2005 OF CENTRAL POLICE STATION, ERNAKULAM.

ANNEXURE A2- THE COPY OF THE SCENE MAHASSAR IN CRIME NO.565/2005 OF CENTRAL POLICE STATION, ERNAKULAM.

ANNEXURE A3- THE CERTIFIED COPY OF THE CHARGE IN CRIME NO.565/2005 OF CENTRAL POLICE STATION, ERNAKULAM.

ANNEXURE A4- THE COPY OF ORDER DATED 27.11.2014 IN CMP NO.2627/2014 OF SESSIONS COURT ERNAKULAM.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ALEXANDER THOMAS, J.

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Crl.M.C.No.3539 of 2015

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Dated this the 7th day of August, 2015

O R D E R

The prayer in this Crl.M.C. is to quash the impugned Anx.A-3 final report/charge sheet filed in the impugned Anx.A-1 Crime No. 565/2005 of the Central Police Station, Ernakulam.

2. Heard Sri.Sherry.J.Thomas, learned counsel appearing for the petitioners and Sri.Tom Jose Padinjerakkara, the learned Addl. D.G. of Prosecution appearing for the respondent State of Kerala.

3. Though technically the prayer couched in this memorandum of Crl.M.C. is for an order from this Court in exercise of its powers under Sec.482 of the Cr.P.C. to quash the impugned Anx.A-3 final report/charge sheet filed in the impugned Anx.A-1 Crime No. 565/2005 of Ernakulam Central Police Station, it is to be noted that the petitioners had subsequent to the filing of the impugned Anx.A-3 final report/charge sheet, had filed an application seeking the remedy of discharge before the court below, the said application for discharge was considered by the court below

and was rejected by the court below as per Anx.A-4 proceedings dated 27.11.2014. Therefore, in view of the subsequent development, the prayer to maintain a petition solely with the prayer for quashing the impugned Anx.A-3 final report/charge sheet, without challenging Anx.A-4 order of refusal of discharge, is neither maintainable nor expedient or both. Sri.Tom Jose Padinjarekkara, learned Addl. D.G. of Prosecution also points out that an order of the nature of Anx.A-4 refusing the plea of discharge, is revisable and that therefore going by the legal principles laid down by the Apex Court in paragraph 6 of the case *Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Others* reported in 1983 SCC (Cri) 115 = AIR 1983 SC 67 = 1983 KHC 404, a petition under Sec.482 to consider the challenge against the order of refusal to discharge, may not be maintainable. In this regard, it is pertinent to note the legal principle laid down by the Apex Court in paragraph 6 of *Municipal Corporation of Delhi's case supra*, which reads as follows:

“6. It may be noticed that Section 482 of the present Code is the ad verbatim copy of Section 561-A of the old Code. This provision confers a separate and independent power on the High Court alone to pass orders *ex debito justitiae* in cases where grave and substantial injustice has been done or where the process of the court has been seriously abused. It is not merely a revisional power meant to be exercised against the orders passed by subordinate

courts. It was under this section that in the old Code, the High Courts used to quash the proceedings or expunge uncalled for remarks against witnesses or other persons or subordinate courts. Thus, the scope, ambit and range of Section 561-A (which is now Section 482) is quite different from the powers conferred by the present Code under the provisions of Section 397. It may be that in some cases there may be overlapping but such cases would be few and far between. It is well settled that the inherent powers under Section 482 of the present Code can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. Further, the power being an extraordinary one, it has to be exercised sparingly. If these considerations are kept in mind, there will be no inconsistency between Sections 482 and 397(2) of the present Code.”

4. In *Municipal Corporation of Delhi's case* supra the Apex Court has held it is only when no other remedies are under the Code of Criminal Procedure that resort to the remedy under Sec. 482 of the Code of Criminal Procedure be entertained or considered by the court. This is indeed a wholesome principle, which guides the exercise of discretion of this Court conferred under Sec.482 of the Code of Criminal Procedure. Therefore, apart from the fact that the petitioners have not challenged Anx.A-4 of refusal of discharge, the prayer in this petition need not be considered even on the additional ground that the remedy under Sec.482 of the Code of Criminal Procedure to challenge the order like Anx.A-4 order of refusal of discharge may not be entertained by this Court. For these grounds, this Court is constrained to hold that this petition need not be considered and is liable to be dismissed.

5. Faced with this situation, Sri.Sherry.J.Thomas, learned counsel for the petitioners submits that the petitioners may be given liberty to institute a proper revision petition to challenge Anx.A-4 order of refusal of discharge, in accordance with the provisions contained in the Code of Criminal Procedure and that the time spent for prosecution of this petition since its institution on 11.6.2015 may be allowed to be urged before the court below as sufficient ground for exclusion of time for the purpose of computing the period of limitation to file the revision. It is only to be observed in this context that it is for the petitioners to work out appropriate remedies in accordance with law and if such a plea as the one posed before this Court is urged with cogent materials in such appropriate proceedings in that appropriate forum, then those aspects are to be decided in those proceedings. In the light of aspects, this Crl.M.C. stands dismissed.

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge