

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

Crl.Rev.Pet.No. 314 of 2005 ()

AGAINST THE ORDER IN CC 1410/2003 of J.M.F.C., KODUNGALLUR

REVISION PETITIONER(S)/REVVISION PETITIONER/COMPLAINANT:

**V.K.BABU, AGED 60 YEARS, S/O.KESAVAN,
VALIPARAMBIL, KAZHIMBRAM,
VALAPLPPAD P.O., CHAVAKKAD TALUK,
THRISSUR DISTRICT, PIN 680 567.**

**BY ADVS.SRI.V.RAJAGOPAL
SRI.P.T.ANTONY**

RESPONDENT(S)/RESPONDENTS/2ND ACCUSED:

- 1. V.A.SAJU, AGED 31 YEARS, S/o.ANANDAN,
VALIPARAMBIL, KAZHIMBRAM,
VALAPLPPAD P.O., CHAVAKKAD TALUK,
THRISSUR DISTRICT, PIN 680 567.**
- 2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR HIGH COURT OF KERALA
ERNAKULAM.**

R2 BY PUBLIC PROSECUTOR SRI. N. SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

STK

P.D. RAJAN, J.

Crl.R.P.314 of 2005

Dated this the 29th of September, 2015

ORDER

Revision petitioner is the complainant in C.C.1410/2003 on the file of Judicial First Class Magistrate-1, Kodungallur challenges the order of discharge of the accused under Section 245(1) Cr.P.C. The original complaint was filed in the Judicial First Class Magistrate Court, Kodungallur as C.C.694/2000 alleging offence punishable under section 420 r/w Section 34 IPC against the two accused persons. After trial first accused was acquitted. The second accused was absconding and his case was split up and refiled as C.C.1410/2003. Later second accused appeared in the trial court, after hearing the complainant, the second accused in C.C.1410/03 was discharged. Being aggrieved by that order, he approached this court with this revision petition.

2. The facts necessary for the indictment in the trial court was that, the accused in C.C.694/2000 borrowed a

sum of Rupees Two lakh on 12.03.98 with an undertaking to return the amount soon. When they failed to return the amount on 19.09.99, they issued a cheque for Rs.2 lakh to the revision petitioner. When the cheque was presented for encashment, it was dishonoured for the reason, 'signature differs'. In the circumstance, revision petitioner issued a notice to the accused and thereafter filed the above case in the trial court. During trial, in C.C.694/2000 prosecution examined PW1 to PW3 and marked Exts.P1 to P7. The trial court acquitted the first accused.

3. The learned counsel appearing for the revision petitioner contended that without examination of the evidence and the documents, an order of discharge has been passed by the lower court. Therefore, the judgment of the trial court is a cryptic one without appreciating the facts before it. Revision petitioner was diligent in prosecuting the case, therefore, the illegality committed by the trial court is to be rectified by invoking the

revisional jurisdiction.

4. Section 245 of the Criminal Procedure Code says that;

(1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate, shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharge the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

5. According to the above Section, the Magistrate can discharge the accused after taking of evidence referred under Section 244, and considers that no case against the accused. No reasons are recorded by the learned Magistrate at the time of discharging the accused. The apex court in **State of Bihar V. Baidnath Prasad @ Baidyanath Shah & Anr. (2002 SAR (Criminal)18)** held as follows:

“An order of discharge of the accused after collecting the evidence envisaged in Section 244 of the Code can be passed only when “the magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction”. This is the legislative edict of Section 245 of the Code. The only other exception to the said precept is that it is open to the Magistrate to discharge the accused at any previous stage of the case “if for reasons to be recorded by such magistrate, he considers the charge to be groundless.”. The magistrate had no reason to discharge the accused at that stage as he felt that there is evidence to frame the charge he could not but dismiss the plea for a discharge. The High Court did not consider the case from the angle provided in Section 245 of the Code. As extracted above, the High Court was persuaded to discharge the accused only on the ground that “the case was pending for the last seven years.”

A perusal of proceedings under Section 245(1) requires that the Magistrate consider only about the evidence of *prima facie* case, whether the evidence if rebutted, would result in conviction. He is not required to consider the entire process of the evidence at this stage. He can

discharge the accused upon taking all evidence referred under Section 244 and he finds that no case against the accused.

6. This court in **Pilathottathil Muhammed Abdulla V. State of Kerala and Anr. 1982 Crl.L.J. 465** explained this position and held that;

“If in a case the court directs the complainant to produce all his witnesses and on the evidence he adduces, there is not even the ghost of a chance of conviction of the accused, the Magistrate has the discretion u/s.245(1) to discharge the accused without affording a further opportunity to the complainant to summon witnesses he could not produce. Under S.244(1) the Magistrate need take only all evidence as may be produced. What is insisted by S.244(1) is not all evidence that the complainant wants to produce. Having dragged the accused to court by filing a complaint he cannot protract the trial by taking steps for the witnesses at his sweet will and pleasure. The indication in S.309 is also that this should not be tolerated. The discharge is neither perverse nor illegal. It has not resulted in any miscarriage of justice also. So, no interference was called for in the revision by the Sessions Court.”

7. The Magistrate was, therefore clearly in error in discharging the accused and no reasons given by it in support thereof. The impugned judgment will cause grave injustice. What is required under 245(1) Cr.P.C is that the Magistrate has to consider only those evidence that were produced before him, by the complainant but not entire evidence that he intends to produce. But if the complainant was directed to produce all his witness and no evidence has been produced by the complainant, the Magistrate has a discretion under 245 (1)Cr.P.C to discharge the accused without giving further opportunity to the complainant. I have gone through the order of the lower court, on a reading of the order, it is obvious that the Magistrate discharged the accused without application of mind, which was done in a mechanical manner, which needs interference invoking revisional jurisdiction.

In the result, the order of the discharge passed by the trial court is set aside. The matter is remitted to the

trial court for fresh consideration as per law. The revision petitioner is directed to appear before Judicial First Class Magistrate, Kodungallur. This revision petition is allowed.

STK

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PA. TO JUDGE

Sd/-
P.D. RAJAN,
JUDGE