

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

Crl.Rev.Pet.No. 1086 of 2007 ()

AGAINST THE ORDER IN CC 466/2004 of J.M.F.C-I, THAMARASSERY

REVISION PETITIONER(S)/REVISION PETITIONER/ACCUSED:

1. K.V.MUHAMMED,(ACCUSED NO.1)
S/O.ABDULLA,
ARETTAKUNNU, KARINKAMANA.
2. P.C.ABDUL NAZAR, (ACCUSED NO.2)
S/O.AHAMMEDKUTTY HAJI, MUBARAK MAZIL,
P.C.MUKKU
THACHAMPOYIL .
3. SALIH,(ACCUSED NO.4),S/O.ABDU RAHIMAN
HAJI, OZHAKKARIPARAMBIL, KOTTAKOTH.
4. ASHRAF ALI (ACCUSED NO.5)UNNIKULAM
AMSOM, KOYILANDY TALUK, KOZHIKODE.
5. UNNI ALIAS MUHAMMED (ACCUSED NO.8)
S/O.BEERAN, PUTHIYOTTIKANDI, KARADY.
6. ABDUL RASHEED,(ACCUSED NO.9),
S/O.IMBICHI MOYI, KALLUVETTUKUZHAYIL,
PARAPPANPOYIL.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENT(S)/RESPONDENT:

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

BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 12-
11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.R.P.1086 of 2007

Dated this the 12th of November, 2015

ORDER

The revision petitioners were charge-sheeted in C.C.466/04 on the file of Judicial First Class Magistrate-1, Thamarassery for offence punishable under Section 143, 147, 283 r/w 149 IPC. The charge against them was that on 20.03.04 at 19.30 hours, the accused formed themselves into an unlawful assembly and in furtherance of their common object, committed rioting and caused obstruction to the vehicle and general public by conducting a procession violating the orders of Hon'ble High Court of Kerala. On the basis of information, Thamarassery Police registered a crime 84/04 under Section 143, 147, 283 r/w 149 IPC and after completing investigation, laid charge against the accused. A1, A2, A4, A5, A8 & A9 appeared in the trial court A6 and A7 are absconding. A3 is reported as no more.

2. During trial, learned Public Prosecutor filed a

petition under Section 321 Cr.P.C. to withdraw the case, which was dismissed by the Judicial First Class Magistrate-1, Thamarassery. Being aggrieved by that accused preferred this revision.

3. Learned counsel appearing for the revision petitioner contended that the reasons were specifically stated by the Assistant Public Prosecutor at the time of filing the petition under Section 321 Cr.P.C., which gives absolute power to withdraw the case with the permission of the court. The reasons stated for refusing permission are not sustainable. Hence revisional jurisdiction is to be invoked to rectify the illegality. The learned Public Prosecutor strongly opposed the above argument.

4. According to 321 of the code of Crl. Procedure, the Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried. If the withdrawal is made before the charge has

been framed, the accused shall be discharged in respect of such offence or offences. If it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences. In the trial court, Asst. Public Prosecutor contended that there was no prohibition order restricting procession and no complaint was received from any officials. The eye witness also not identified the persons participated in the procession and no arrest was effected by the detecting officer. The detecting officer mentioned the name of the 7 persons in the FIR. More than 150 people participated in the procession under the leadership of A1 to A7 along the Kozhikode-Thamarassery road from South to North. They made obstruction to the pedestrians and vehicles and also shouting slogans against the police people. CW4 to 6 are the official witnesses who accompanied the police officer are the eye witnesses. The learned Magistrate observed that, if the obstruction made by the petitioner is to the general public and vehicle, it is a misbehaviour and committed serious offence, if the case

is withdrawn, it will affect the administration justice. The Asst. Public Prosecutor has not applied his mind in the correct perspective. Hence, the petition was dismissed by the trial court.

5. The guidelines for withdrawing from the prosecution has been explained by the Apex Court in **Rajender Kumar V. State** (AIR 1980 SC 1510). It was held as follows:-

“ 13A. We may add, it shall be the duty of the Public Prosecutor to inform the Court and it shall be the duty of the Court to appraise itself of the reasons which prompt the Public Prosecutor to withdraw from the prosecution. The Court has a responsibility and a stake in the administration of criminal justice and so has the Public Prosecutor, its 'Minister of Justice'. Both have a duty to protect the administration of criminal justice against possible abuse or misuse by the Executive by resort to the provisions of S.321, Criminal Procedure Code. The independence of the judiciary requires that once the case has travelled to the Court, the Court and its officers alone must have control over the case and decide what is to be done in each case.

14. We have referred to the precedents of this Court where it has been said that paucity of

evidence is not the only ground on which the Public Prosecutor may withdraw from the prosecution. In the past, we have often known how expedient and necessary it is in the public interest for the Public Prosecutor to withdraw from prosecutions arising out of mass agitations, communal riots, regional disputes, industrial conflicts, student unrest etc. Wherever issues involve the emotions and there is a surcharge of violence in the atmosphere it has often been found necessary to withdraw from prosecutions in order to restore peace, to free the atmosphere from the surcharge of violence to bring about a peaceful settlement of issues and to preserve the calm which may follow the storm. To persist with prosecutions where emotive issues are involved in the name of vindicating the law may even be utterly counter-productive. An elected Government, sensitive and responsive to the feelings and emotions of the people, will be amply justified if for the purpose of creating an atmosphere of goodwill or for the purpose of not disturbing a calm which has descended it decides not to prosecute the offenders involved or not to proceed further with prosecutions already launched. In such matters who but the Government can and should decide, in the first instance, whether it should be baneful or beneficial to launch or continue prosecutions. If the Government decides that it would be in the public interest to withdraw from

prosecutions, how is the Government to go about this risk?

15. Under the Code of Criminal Procedure it is the Public Prosecutor that has to withdraw from the prosecution and it is the Court that has to give its consent to such withdrawal. Rightly too, because the independence of the judiciary so requires it, as we have already mentioned. Now, the Public Prosecutor is an Officer of the Court. He sets the criminal law in motion in the Court. He conducts the prosecution in the Court for the people. So it is he that is entrusted with the task of initiating the proceeding for withdrawal from the prosecution. But, where such large and sensitive issues of public policy are involved, he must, if he is right minded, seek advice and guidance from the policy-makers. His sources of information and resources are of a very limited nature unlike those of the policy-makers. If the policy-makers themselves move in the matter in the first instance, as indeed it is proper that they should where matters of momentous public policy are involved, and if they advise the Public Prosecutor to withdraw from the prosecution, it is not for the Court to say that the initiative came from the Government and therefore the Public Prosecutor cannot be said to have exercised a free mind. Nor can there be any quibbling over words. If ill-informed but well meaning bureaucrats choose to use expressions like “ the Public Prosecutor is

directed” or “ the Public Prosecutor is instructed”, the Court will not on that ground alone stultify the larger issue of public policy by refusing its consent on the ground that the Public Prosecutor did not act as a free agent when he sought withdrawal from the prosecution. What is at stake is not the language of the letter or the prestige of the Public Prosecutor but a wider question of policy. The Court, in such a situation is to make an effort to elicit the reasons for withdrawal and satisfy itself, that the Public Prosecutor too was satisfied that he should withdraw from the prosecution for good and relevant reasons”.

According to 321 Cr.P.C., which empowers the Asst. Public Prosecutor or Public Prosecutor to withdraw from the prosecution of any person with the consent of the court. The withdrawal may be justified on broader consideration of public peace and larger consideration of public justice, even deeper consideration of promoting security of the people in the locality. The disorderly situation, destroying the harmony in the society is a serious threat to public justice, if such cases are withdrawn without application of mind. Therefore,

withdrawal from prosecution means retracting from the prosecution which has to be done by the Asst. Public prosecutor with the consent of the court. Here, the learned Magistrate opined that there is no proper application of mind and in such a circumstance, the court declined to grant consent. I find no illegality in the above order and no merit in this petition and it is dismissed.

STK

Sd/-
P.D. RAJAN,
JUDGE

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P.A. TO JUDGE