

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

Crl.Rev.Pet.No. 2440 of 2007 ()

AGAINST THE ORDER IN CC 447/2005 of J.F.C.M, PAYYOLI

REVISION PETITIONER(S)/ACCUSED NOS. 1 TO 15:

1. BINU KUMAR, S/O M.R.KUNHIKRISHNAN,
AGED 23/02, RAMATHPOYIL HOUSE, ERAMALA AMSOM
KARTHIKAPPALLI DESOM, KURINHALIYOD.
2. P.M.BIJU, S/O BALAN,
AGED 23/02, PALORAMEETHAL HOUSE,
MANIYOOR AMSOM,
MANDARATHOOR DESOM.
3. RANJITH, S/O KUMARAN,
AGED 23/02, PARAYULLATHIL HOUSE,
NADAKKUTHAZHA AMSOM,
PUTHOOR DESOM, VATAKARA.
4. BIJEESH, S/O BHASKARAN,
AGED 19/02, THAYYULLATHIL HOUSE,
KACHERI AMSOM,
KOTTEMBRAM DESOM, IRINGAL.
5. SHAJITH, S/O CHANDRAN,
AGED 23/02, THAROLMEETHAL HOUSE,
VATAKARA AMSOM,
KARIMBANAPALAM.
6. SHAJI V.P., S/O KANARAN,
AGED 21/02, VALIYAVEETIL HOUSE, AYANCHERI AMSOM,
KADAMERI.
7. VIJU, S/O BALAN,
AGED 22/02, AMBALATHODIYIL PALORAMEETHAL HOUSE,
MANIYOOR AMSOM, MANDARATHOOR, KURUNTHODI.
8. NIDHIN, S/O KUNHIKKELAPPAN,
AGED 21/02, NOCHODI HOUSE, THIRUVALLOOR AMSOM
DESOM.
9. NITHIN, S/O BALAN VAIDYAR,
AGED 20/02, THIRUVALLOOR AMSOM, DESOM
THIRUVALLOOR.

10. BIJU, S/O CHATHU,
AGED 27/02, KUYIIL NADEMMAL HOUSE, VATAKARA AMSOM
DESOM, PAKKAYIL.
11. NADOL SUDHEESH, S/O SREEDHARAN,
AGED 25/02, NADOL VEEDU, VATAKARA AMSOM
DESOM, PAKKAYIL.
12. SANAL M., S/O VIMALA,
AGED 20/02, MURICHANDI HOUSE, PALAYADU AMSOM
PATHIYARAKKARA, PANIKKOTTI.
13. HIRAN, S/O BALAN T.V.,
AGED 28/02, VALIYAPARAMBATH HOUSE, CHORODE AMSOM
MUTTUNGAL WEST.
14. AJITH SREEDHARAN, S/O SREEDHARAN,
AGED 23/02, CHEKKIKKUL HOUSE,
THIRUVALLOOR AMSOM, DESOM.
15. PRAKASAN, S/O NANU,
AGED 35/02, KARAKKAD PARAMBU VEEDU,
OORALUNKAL AMSOM,
MADAPPALLI.

BY ADV. SRI.SUNNY MATHEW

RESPONDENT(S)/COMPLAINANTS:

1. VIJAYAKUMAR,
FATHER'S NAME NOT KNOWN, POLICE CONSTABLE NO.4591
VADAKARA POLICE STATION, VADAKARA, KOZHIKODE DISTRICT.
2. DILEEP,
FATHER'S NAME NOT KNOWN, POLICE CONSTABLE NO.6169
VADAKARA POLICE STATION, VADAKARA, KOZHIKODE DISTRICT.
3. HEAD CONSTABLE NO.6126
DRIVER, VADAKARA POLICE STATION, VADAKARA
KOZHIKODE DISTRICT.
4. THE CIRCLE INSPECTOR OF POLICE,
VADAKARA POLICE STATION, KOZHIKODE DISTRICT.
5. STATE OF KERALA THROUGH THE
SUB INSPECTOR OF POLICE, VADAKARA POLICE STATION.
(RESPONDENTS 1 AND 2 REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM)

R5 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

STK

P.D. RAJAN, J.

Crl.R.P.2440 of 2007

Dated this the 14th of December 2015

ORDER

The revision petitioners, who are the accused in C.C. 447/05 on the file of the Judicial First Class Magistrate, Payyoli challenges the order in Crl. M.P.547/07 of that court. They filed the above petition under Section 321 of the Code of Criminal Procedure for withdrawing from prosecution. They were charge-sheeted under Section 143, 147, 148, 332, 353 r/w 149 IPC and also under Section 3(2)(e) of PDPP Act. The charge against them is that on 26.07.02 at 9.45 am, the accused formed themselves into an unlawful assembly and in furtherance of their common object, they armed with deadly weapon like stone and committed rioting at Edodi road at Vadakara and they damaged public property and also pelted stone towards police officials during discharge of their official duty. They sustained serious injury and prevented them from discharging their official duty. They

also pelted stones towards two KSRTC buses bearing Nos.KL.15.2112 and KL.15.2183 and thereby sustained a loss of Rs.9,600/-. Thus the Judicial First Class Magistrate Court, Payyoli, charge-sheeted them and they preferred the above petition, which was dismissed by the learned Magistrate. Being aggrieved by that they approached this court with this revision petition.

2. The learned counsel appearing for the revision petitioner contended that the offence is committed against the State and if the State decides to withdraw the case, there is no meaning in proceeding with the prosecution and the court has a duty to consider that opinion. The witnesses, who are injured in the above case have no voice in this matter, the Asst. Public Prosecutor filed the above petition according to the decision taken by the Government and there is no meaning in continuing the prosecution.

3. The learned Public Prosecutor strongly opposed the above argument and contended that the accused damaged the public property and if KSRTC vehicles were

damaged, they are liable to pay the compensation amount.

4. According to Section 321 of the Code of Criminal Procedure, the Public Prosecutor or the Asst. Public Prosecutor, in charge of the case may withdraw from the prosecution with the consent of the court at any time before the judgment is pronounced. The court has a responsibility for the proper administration of the public justice and also the Public prosecutor has the responsibility to maintain the Criminal Justice System. The principles with regard to the withdrawal of the case has been settled by the apex court in **Rajender Kumar Jain V. State (AIR 1980 SC 1510)**, it held as follows;

“If political fortunes are allowed to be reflected in the processes of the Court very soon the credibility of the rule of law will be lost. So we insist that courts when moved for permission for withdrawal from prosecution must be vigilant and inform themselves fully before granting consent. While it would be obnoxious and objectionable for a Public Prosecutor to allow himself to be ordered about, he should appraise himself from the Government and thereafter apprise the Court the

host of factors relevant to the question of withdrawal from the cases, but under no circumstances should he allow himself to become anyone's stooge."

5. Here, the learned Magistrate examined PW1 to PW12 and marked Exts.P1 to P13. The accused were also questioned under Section 313 Cr.P.C. When the case was posted for defence evidence, the learned Asst. Public Prosecutor filed petition for withdrawing the case. The learned Asst. Public Prosecutor observed that the alleged incident is a political atrocity and the identity of the accused are not clear, there is no proper evidence and sought permission to withdraw from prosecution.

6. It is true that the revision petitioners are now employed in Government service and in the light of the withdrawal petition filed in the trial court, it is seen that some of the witnesses were not cross-examined. Reason for rejecting the sanction was not properly explained by the trial court. In the circumstance, I observe that, if on the materials and the case records, it is found that withdrawal application was filed by the Asst. Public

Prosecutor with malafide intention, that has to be disclosed by the learned Magistrate. The accused got employment in Government service is a ground under Section 321 Cr.P.C., which was not examined by the learned Magistrate. The Public Prosecutor or Assistant Public Prosecutor can withdraw from the prosecution only with the consent of the court. The Public Prosecutor or Assistant Public Prosecutor who is in-charge of conducting the prosecution alone can file an application under Section 321 Cr.P.C. If the Government decides that it would be in the public interest to withdraw from the prosecution, they should advice Public Prosecutor or Assistant Public Prosecutor to withdraw from prosecution. Apex court in **1987 SCC (Crl.) 73** held that, even where reliable evidence has been adduced to prove the charges, the Public Prosecutor can seek the consent of the court to withdraw from the prosecution. Since the major portion of the trial is over, there is no meaning in retaining this petition here.

In the circumstance, the order passed by the

the learned Magistrate in Crl.M.P.547/07 is set aside, he shall consider the public interest in the matter and dispose the Crl.M.P. afresh. If he allows the request, he shall explain the public interest in this case. If there is no public interest in it, he shall recall the witnesses, who were not cross-examined and give an opportunity to the petitioner to cross-examine those witnesses and dispose the matter as per law within 4 months from the date of the receipt of a copy of this order. This revision petition is disposed accordingly.

Sd/-

**P.D. RAJAN,
JUDGE**

STK

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PA. TO JUDGE