

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN**

**WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936**

**Crl.Rev.Pet.No. 2628 of 2009 ( )**

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AGAINST THE JUDGMENT IN CC 2/2008 OF CHIEF JUDICIAL MAGISTRATE  
KOZHIKODE  
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**REVISION PETITIONER(S)/ACCUSED 1 & 2:**  
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- 1. M.PRABHAKARAN, LALU NIVAS,  
ITHILTHARA PARAMBU, PAYYANAKKAL, KALLAYI P.O.  
KOZHIKODE.**
- 2. PREMALATHA, W/O.M.PRABHAKARAN,  
RESIDING -DO-**

**BY ADV. SRI.T.G.RAJENDRAN**

**RESPONDENT(S)/COMPLAINANT/STATE:**  
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- 1. PRABHISHA.N., D/O.N.BABU, NAMBUNI  
HOUSE, YMRC ROAD, VATTAKKINAR  
MEENCHANDA.**
- 2. STATE REP; BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.**

**R2 BY ADV. RAJESH VIJAYAN, PUBLIC PROSECUTOR  
R1 BY ADV. SRI.P.V.KUNHIKRISHNAN**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD  
ON 04-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**APPENDIX**

**PETITIONER'S EXHIBITS:-**  
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**ANNEXURE-I-TRUE COPY OF THE PRIVATE COMPLAINT FILED BY THE 1ST RESPONDENT DATED 10.7.2007.**

**ANNEXURE-II- TRUE COPY OF THE SUMMONS ISSUED TO THE PETITIOENRS.**

**ANNEXURE-III- TRUE COPY OF THE DEPOSITION**

**ANNEXURE-IV-TRUE COPY OF THE STATEMENT GIVEN BY DR.SASIDHARAN**

**ANNEXURE-V-TRUE COPY OF THE JUDGMENT IN CRL.M.C.4220/08 OF THIS HON'BLE COURT.**

**ANNEXURE-VI-TRUE COPY OF THE ORDER CMP.1686/2009 IN CC.2/2008 OF CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE.**

**RESPONDENT'S EXHIBITS:** **NIL**  
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R.AV

//True Copy//

PA to Judge

**K.RAMAKRISHNAN, J**

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**CRL.R.P.NO.2628 OF 2009**  
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**Dated this the 4<sup>th</sup> day of March, 2015**

**O R D E R**  
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Accused Nos.1 and 2 in C.C.No.2/2008 on the file of Chief Judicial Magistrate Court, Kozhikode are the revision petitioners herein.

2. The case was taken on file on the basis of a private complaint filed by the complainant-first respondent herein against the revision petitioners alleging offences under sections 120B, 417, 418, 420 read with section 34 of the Indian Penal Code.

3. It is alleged in the complaint that complainant married the son of the revision petitioners on 29.10.2006. At the time of marriage, the revision petitioners have made to believe the complainant that their son was healthy to lead a happy married life. But later, he died on 26.04.2007 on account of leukaemia and it was revealed that this fact was known to the revision petitioners and suppressing this fact that the marriage was conducted by them and if this fact was known to the complainant, she would not have married him and thereby they have practised fraud and cheated her and thereby they have committed the aforesaid offence.

4. The complainant and three witnesses including two

doctors were examined on the side of the complainant and after considering the evidence, the learned Magistrate took the case on file as CC.No.2/2008 against the revision petitioners under section 420 read with section 34 of the Indian Penal Code and issued summons to the revision petitioners. The petitioners filed Crl.M.C.No.4220/2008 before this court for quashing the proceedings and that was disposed of by Annexure-5 order, by this court leaving open the right of the petitioners to apply for discharge after the evidence of the complainant under section 244 of the Code of Criminal Procedure is over under section 245 (1) of the Code of Criminal Procedure and thereafter the petitioners filed Crl.M.P.No.1686/2007 for discharge under section 245 (2) of the Code of Criminal Procedure and by the impugned Annexure-6 order, the learned Magistrate dismissed the application which is being challenged by the revision petitioners by filing this revision petition.

5. Heard the counsel for the revision petitioners and first respondent and the learned Public Prosecutor.

6. The counsel for the revision petitioners submitted that going by the evidence adduced on the side of the complainant and the doctors as CWs 2 and 3 will go to show that there is nothing to show that the deceased was suffering from leukaemia at the time of marriage and there is no question of suppressing

the same arises. So, the allegations are groundless and they are entitled to get discharge under section 245(2) of the Code of Criminal Procedure. But, the learned Magistrate had dismissed the application without considering this fact, thereby illegality has been committed by the court below.

7. The counsel for the first respondent submitted that this court has dismissed the petition, leaving open the right of the petitioners to apply for discharge under section 245 (1) or (2) of the Code of Criminal Procedure and the court below had come to the conclusion that there is no ground to discharge under section 245(2) of the Code of Criminal Procedure as on application of mind, the court below has come to the conclusion that there is prima facie evidence and the question of discharge can be considered after evidence under section 244 of the Code of Criminal Procedure is over and that stage has not reached and that was a reason given by the court below for dismissal of the application and there is no illegality committed by the court below.

8. It is an admitted fact that the son of the revision petitioners married the complainant-first respondent on 29.10.2006 and later he died on 26.04.2007 due to leukaemia. The case of the complainant in the complaint was that this fact was known to the revision petitioners earlier and that fact was

suppressed and making them to believe that he was a healthy person and the marriage was conducted and thereby they have cheated them. The complainant, her father and two doctors were examined and after considering the evidence, the learned Magistrate took the case on file as CC.No.2/2008 under section 420 read with 34 of the Indian Penal Code and summons was issued to the revision petitioners. This was challenged by the revision petitioners by filing Crl.M.C.No.4220/2008 to quash the proceedings under section 482 of the Code of Criminal Procedure and this court by Annexure-2 judgment, dismissed the application observing as follows:-

***In the result:-***

- (a) This Crl.M.C. is dismissed.***
- (b) petitioners may raise the plea for discharge under Section 245(2) and/or 245(1) Cr.P.C at the appropriate stage.***
- (c) Until a decision is taken on the question of framing charge and the learned Magistrate comes to a conclusion that charges are liable to be framed under Section 246 Cr.P.C, the petitioners shall be permitted to be represented by counsel unless for reasons to be recorded the learned Magistrate otherwise directs.***

It is on that basis the revision petitioners filed Crl.M.P.1686/2009 for discharge under section 245(2) of the Code of Criminal Procedure. It may be mentioned here and that was dismissed by the court below by the impugned order.

9. Section 245 of the Code of criminal Procedure reads as follows:-

***Section 245. When accused shall be discharged:-(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 discharging 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.***

10. It is true that power has to be given to the Magistrate under section 245(2) of the Code of Criminal Procedure to discharge the accused at any previous stage of the case, for reasons to be recorded by such Magistrate, if he considers the charge is groundless. But, if the court is not satisfied, at that stage that the charge is groundless, court will have to proceed under section 244 of the Code of Criminal Procedure giving opportunity to the complainant to adduce evidence and on the basis of the evidence adduced under section 244 of the Code of the Criminal Procedure, then if the court is satisfied that no case against the accused has been made out, if unrebutted, warrant any conviction, the Magistrate shall discharge him under section 245(1) of the Code of Criminal Procedure. But, if this court has satisfied on the basis of the evidence available that no case has been made out and the allegations are groundless, this court would have invoked the power under section 482 of the Code of Criminal Procedure and quashed the proceedings as the same evidence now relied on by the counsel for the revision petitioners

have been produced and relied on by the revision petitioners for the purpose of quashing the proceedings as well. But that was not done by this court. So, that shows that the court has, at that stage, come to the conclusion that it cannot be said at this stage that the charge made against the accused persons are groundless so as to get the benefit of discharge or pre-charge discharge under section 245 (2) of the Code of Criminal Procedure. Further, it is also seen from the order of this court that the mind of the court is very clear that the revision petitioners can apply for discharge under section 245 (1) of the Code of Criminal Procedure, after the evidence of the complainant is over under section 244 of the Code of Criminal Procedure. So, under the circumstances, the court below was perfectly justified in dismissing the application stating that it is a pre-mature one and the stage for discharge will arise only after completion of the evidence of the complainant under section 244 of the Code of Criminal Procedure is perfectly justifiable and that does not call for any interference. So, the revision lacks merit and the same is liable to be dismissed.

10. Considering the fact that the case is of the year 2008. The learned Magistrate is directed to expedite the enquiry under section 244 of the Code of Criminal Procedure and after taking evidence under section 244 of the Code of Criminal Procedure, if

the revision petitioners apply for discharge under section 245(1) of the Code of Criminal Procedure, then the learned Magistrate is directed to dispose of that application as expeditiously as possible. The court below is directed to take all endeavour to complete the evidence under section 244 of the Code of Criminal Procedure and hearing under section 245 (1) of the Code of Criminal Procedure at any rate, within six months from the date of receipt of this order. The earlier order directing the revision petitioners to appear through counsel will continue, till the disposal of the case by the court below and if their presence is required for the purpose of framing charge and also for questioning, then they will have to appear before that court for that purpose, when directed by the court below.

With the above observation and direction, the revision petition is dismissed. Interim order of stay granted is vacated and Crl.M.P.805/2009 is dismissed. Office is directed to communicate this order to the concerned court immediately.

**Sd/-**  
**K.RAMAKRISHNAN, JUDGE**

R.AV

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PA to Judge