

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

Crl.Rev.Pet.No. 137 of 2015 ()

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(AGAINST ORDER DATED 28.02.2014 IN CRL.M.P.NO.8867/2013 IN C.C.562/2005  
OF THE COURT OF ADDL.CHIEF JUDICIAL MAGISTRATE, THIRUVANANTHAPURAM)

REVISION PETITIONER(S)/ACCUSED NO.1:-:

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T.S. RAJAN, AGED 52 YEARS  
S/O.THAPASI MUTHU, S.R.M. NIVAS, PAKKOTTU VILLAGE  
VILAVAMCODE, KANYAKUMARI.

BY ADVS.SRI.NAGARAJ NARAYANAN  
SRI.SAIJO HASSAN  
SRI.PRATHAP PILLAI  
SRI.BENOJ C. AUGUSTIN  
SRI.VISHNU BHUVANENDRAN

RESPONDENT(S)/COMPLAINANT:-:

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

BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON  
02-03-2015 ALONG WITH CRL.R.P.NOS.264 & 265 OF 2015 , THE COURT ON  
THE SAME DAY PASSED THE FOLLOWING:

CRL.R.P.137/15

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A1:TRUE COPY OF THE ORDER DATED 21.6.2012 IN  
CRL.M.C.2318/2006 OF THIS HONOURABLE COURT.

RESPONDENT'S EXHIBITS:NIL

//TRUE COPY//

P.A.TO JUDGE

**“C.R”**

**C.T. RAVIKUMAR, J.**

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**CRL.R.P. Nos.137, 264 & 265 OF 2015**

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Dated this the 2<sup>nd</sup> day of March, 2015

**ORDER**

In view of the commonness of the issues involved in these revision petitions, they are taken up for joint consideration and disposal. The petitioner in Crl.R.P.No.137 of 2015 is the first accused in C.C.No.562 of 2005 on the files of the Additional Chief Judicial Magistrate, Thiruvananthapuram. The petitioners in Crl.R.P.Nos.264 & 265 of 2015 are respectively the first accused in C.C.No.563 of 2005 and second accused in C.C.No.561 of 2005 on the files of the same court. They moved Crl.M.P.Nos.8867/2013, 8870/2013 and 8866/2013 in those calender cases seeking their discharge. Those petitions were dismissed by orders dated 28.2.2014. The captioned revision petitions are filed challenging the order of dismissal passed in their respective petition for discharge. A bare perusal of the impugned orders would reveal that certain observations of this Court made in the

orders in certain criminal miscellaneous petitions moved by some of the accused in the aforesaid calender cases, including the petitioners in Crl.R.P.Nos.137 and 264 of 2015, weighed with the court below in passing the said orders.

2. The petitioners are employees of the Aunducode Primary Agricultural Co-operative Bank. They applied for salary certificates for the purpose of availing housing loans from Canfin Homes. Subsequently, salary certificates were issued to them for that purpose. A third party made a complaint of fabrication of false salary certificates alleging that in place of the actual salary drawn by each of the accused persons higher amounts were shown in their respective salary certificates and pursuant to the same separate crimes were registered against them and that ultimately led to the registration of the aforementioned calender cases. In all those cases, the revision petitioners are charged for commission of offences u/s 120(b), 197, 198, 420, 468, 471 r/w 34 IPC. The petitioners in Crl.R.P.Nos.137 &

264 of 2015 had earlier approached this Court by filing Crl.M.C.Nos.2318 & 2364 of 2006 respectively under section 482 Cr.P.C taking up the plea that the final reports filed in the concerned crimes registered against them lack ingredients to attract the offences alleged against them. Evidently, the said Crl.M.Cs were dismissed by this Court by separate orders, produced as Annexure-A1 in Crl.R.P.Nos.137 and 264 of 2015 without prejudice to the right of the said petitioners to argue for discharge under section 239, Cr.P.C. True that a perusal of Annexure- A1 in the aforesaid revision petitions would also reveal that at that point of time, this Court had declined to accept the arguments advanced by the petitioners and the learned Judge who considered the said Crl.M.Cs while dismissing them observed thus:-

“Having gone through Annexure A1 final report and hearing the learned counsel for the petitioner, the Government Pleader and the first respondent, I am not inclined to accept the arguments advanced by the petitioners since, prima facie I find that there are sufficient averments in the final report to frame charge

for the offences alleged.”

3. A close scrutiny of Annexure-A1 would reveal that the learned Judge further went on to observe thus:-

“However, I am not expressing any opinion on merits as the petitioners have got a statutory right to seek discharge under section 239 of the Code of Criminal Procedure and that it was not so far availed.”

4. Evidently, while dismissing the Crl.M.Cs as per Annexure-A1 order this Court directed to give opportunities to the petitioners to take up the plea of discharge under section 239, Cr.P.C in an effective manner without being prejudiced by the observations as quoted above. I am constrained to take up such a view as in case of a finding to the contrary that there was sufficient grounds in the final report and materials appended therewith to frame charge under the aforesaid offences or in other words, that the report could not be said to be groundless there would not have been any reason and purpose for this Court to permit the petitioners to take up the plea of

discharge under section 239, Cr.P.C before the trial court. In such circumstances and especially, in view of the unequivocal divulgence that the Court is not expressing any opinion on merits and the dismissal of those petitions was ordered without prejudice to the right of the petitioners to take up the plea of discharge under section 239, Cr.P.C, any observation in Annexure -A1 orders should not have been and could not have been construed in a manner prejudicial to the statutory right available to the petitioners to take up the plea of discharge under section 239, Cr.P.C. True that, in Crl.R.P.No.265 of 2015 arising from C.C.No.561 of 2005, the petitioner therein had not previously approached this Court. At the same time, the second accused in C.C.No.561 of 2005, like the petitioners in Crl.R.P.Nos.137 and 264 of 2015, had, approached this Court, earlier, by filing Crl.M.C.No.2371 of 2006 and the said case was also dismissed with liberty to the petitioner to take up the plea of discharge before the trial court. In such circumstances, when once it is found that this Court granted liberty to the petitioners who are the accused in

the aforesaid calender cases to take up the plea of discharge at appropriate stage under section 239, Cr.P.C and categorically made it clear that no opinion on merits was expressed the observations made while dismissing those Crl.M.Cs would not have and should not have caused prejudice to the petitioners' right to take up the plea of discharge and the petitions for discharge were bound to be considered, untrammelled by the observations made in Annexure-A1 orders after carefully considering the police report and the documents sent with it under section 173, Cr.P.C, in accordance with law. With the aforesaid prelude I will consider the sustainability or otherwise of the challenge against the impugned orders.

5. I have heard the learned counsel for the petitioners and the learned Public Prosecutor. The sum and substance of the grievances of the petitioners is that their applications for discharge were dismissed by the trial court without proper application of mind and that the learned Magistrate was swayed away with the

observations of this Court in Annexure-A1 orders in Crl.R.P.Nos.137 and 264 of 2015.

6. The question to be considered is whether the dismissal of the applications submitted by the petitioners for discharge as per the impugned orders require interference in exercise of the revisional jurisdiction. For answering that question appropriately it is only apropos to ascertain the position whether the trial court is required to assign reason for refusing to discharge an accused and dismissing a petition made for discharge. It is worthy to refer to section 239, Cr.P.C in this context and it reads thus:-

**“239.When accused shall be discharged--If,** upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

7. True that a bare perusal of section 239, Cr.P.C would reveal that it enjoins the Magistrate to record his reasons for holding the charge against a particular accused to be groundless for his/her discharge. This is certainly because an order of discharge passed under section 239, Cr.P.C is a revisable order. In such circumstances, the question is whether an application for discharge could be dismissed without assigning any reason at all? In other words, whether a mere recital to the effect that examination of police records and documents submitted along with the final report prima facie makes out the alleged offence/offences and therefore, there is no ground to consider the charge against a particular accused as groundless, would suffice to satisfy a due consideration of applications for discharge moved by accused persons, in accordance with law. As noticed hereinbefore, a bare perusal of section 239 Cr.P.C would reveal that if the Magistrate thinks necessary after giving the prosecution an opportunity of being heard, the learned Magistrate could consider the charge against the accused to be groundless for the

purpose of discharging the accused and if he forms the opinion that the charge against the accused is groundless then, after recording the reasons for discharge, the said accused could be discharged. Does it mean that the word 'consider' appearing in section 239, Cr.P.C mandates such a consideration only for the purpose of discharging the accused? The word 'consider' is not a defined word under the Code of Criminal Procedure. According to the Black's law dictionary, the word 'consider' means 'to fix the mind on with a view to careful examination'. In such circumstances, the word 'consider' employed under section 239 Cr.P.C certainly carries the meaning 'examination with due application of mind' and therefore, while considering an application for discharge such consideration as to whether the charge is groundless or not has to be undertaken. If that is the meaning of the expression 'consider' employed in section 239, Cr.P.C and the reason to insist recording of reasons in an order passed under section 239 Cr.P.C discharging the accused is that such an order is revisable then, how can it be said that on considering an application for discharge it

can be dismissed without assigning any reason. It is to be noted that an order dismissing an application filed under section 239 Cr.P.C for discharge is also revisable. I am not oblivious of the position settled by a plethora of decisions that at the stage of consideration of an application for discharge under section 239 Cr.P.C, the court concerned is not required to conduct a mini trial or do an exercise of weighing the materials including the final report and the other documents sent with it under section 173, Cr.P.C and further that no reasons are required to be assigned for framing charge when the trial court decides to frame charge. But at the same time, since an order dismissing the application for discharge could also be subjected to revision, the order dismissing such application should also contain a reference regarding materials revealing the existence of prima facie evidence. I shall not be understood to have held that such an order shall contain discussion or reference regarding all the materials revealing the existence of prima facie case. In short, an indication as to why the case could not be held 'groundless' must exist in the order

of dismissal of an application for discharge. The mere recital that there is prima facie case or that it is not 'groundless' will not be sufficient to dismiss an application for discharge. It cannot be lost sight of the fact that reasoning is the hallmark of any judicial order. The order of dismissal must be one conveying at least one reason as to why the case could not be said to be groundless. The decision of Jharkand High Court in **Shabra Khatoon and others v. State of Jharkhand and another** reported in **2005 CrL.L.J 3292** lends support to my view. The said decision was rendered relying on the analogy obtained from the decision of the Hon'ble Supreme Court in **State of Karnataka v. L.Muniswamy** reported in **AIR 1977 SC 1489**. Paragraphs 18 and 19 therein read thus:-

“18.In the case of State of Karnataka v. L.Muniswamy reported in AIR 1977 SC 1489: (1977 CrL.L.J 1125) the Supreme Court while dealing with a case under the provisions of Section 227 of the Cr.P.C, i.e., in a case triable by a Court of Session, has held that the object of the provisions which requires the Sessions

Judge to record its reason is to enable the Superior Court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused. High Court therefore, is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case.

19. In my view, the same analogy would apply in a case covered under Sections 239 and 245 Cr.P.C.. Therefore, relying on the aforesaid decision of the Supreme Court in the case of State of Karnataka v. L. Muniswamy (1977 Cr.LJ 1125) (supra) I find from the impugned order that no reason at all has been assigned by the trial Court for refusing to discharge the accused petitioners and, as such, it suffers from serious infirmity.”

8. In these cases, a perusal of the impugned orders would reveal that the dismissal of criminal miscellaneous cases filed by the accused in C.C.Nos.562/2005 and 563/2005 weighed with the court.

In the impugned order in Crl.R.P.No.265/2015, it is observed thus:-

“A2 had filed Crl.M.C.No.2371/2006 before Hon'ble High Court of Kerala with a prayer to quash the charge sheet in this case and as per

order dated 15/01/2010 Hon'ble High Court dismissed the above petition. In that order, Hon'ble High Court has observed “that there are necessary averments in the final report to send the petitioner for trial for the above offences. Whether there are admissible evidence or not, is a matter to be decided during trial.”

9. In Crl.R.P.Nos.137/2015 and 264/2015 also similar observation was made taking note of the dismissal of Crl.M.Cs filed by the accused therein. Thereafter the court below considered the applications and dismissed the applications through the impugned order in exactly identical manner. The operative portion of all the orders are exactly similar and it runs thus:-

“On careful examination of the police records and the documents submitted with it u/s 173 Cr.P.C it can be seen that prima facie case is made out for the alleged offences against the accused and there is no ground to consider that the charge against the accused is groundless. Whether the accused have actually committed offences alleged against them or not is a matter of evidence. Since it is seen that there is no ground to consider the charge against the accused is groundless and it is seen that prima facie case is made out against the accused for the alleged offences and there is sufficient

ground to proceed further, this petition filed under section 239 Cr.P.C for discharge is only liable to be dismissed.”

10. The impugned orders did not reflect a consideration of applications for discharge with application of mind, as mentioned above. I am of the view that the impugned orders in these cases are liable to be set aside in the light of the discussions made as above as they are thus suffered from serious infirmity. Accordingly, order dated 28.2.2014 in CMP No.8867/2013 in C.C.562 of 2005, CMP.No.8870/13 in C.C.No.563 of 2005 and CMP.No.8866/13 in C.C.No.561 of 2005 respectively in the captioned revision petitions are set aside and those petitions for discharge in the aforementioned calender cases are restored into the files. The learned Additional Chief Judicial Magistrate, Thiruvananthapuram shall pass appropriate orders in accordance with law after hearing the accused and learned Assistant Public Prosecutor bearing in mind the observations made hereinbefore. Since the calender cases are of the year 2005, such orders shall be passed as expeditiously as possible, at any rate, within

a period of three months from the date of production of a copy of this order.

These revision petitions are allowed as above.

**Sd/-**  
**C.T. RAVIKUMAR**  
**(JUDGE)**

**spc/**

**C.T. RAVIKUMAR, J.**

**JUDGMENT**

**September, 2010**

