

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

**PRESENT:**

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

**THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936**

**Crl.Rev.Pet.No. 206 of 2015 ()**  
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**AGAINST THE ORDER IN C.M.P.NO.656 OF 2014 IN C.C.NO.534 OF 2010 OF THE  
JUDICIAL FIRST CLASS MAGISTRATE COURT - I, ALAPPUZHA DATED 09.12.2014.**

**REVISION PETITIONER(S)/ACCUSED 1 & 2:**  
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- 1. NINAN THAYYIL, AGED 43 YEARS,  
HOUSE NO.B 46, RAJENDRA NAGAR, MADHURA ROAD,  
NEW DELHI 110068**
- 2. JAMES THAYYIL, AGED 49 YEARS,  
HOUSE NO. B 186, RAJENDRA NAGAR, MADHURA ROAD,  
NEW DELHI 110068**

**BY ADVS.SRI.VELLAYANI SUNDARARAJU  
SMT.P.MEENAKUMARI**

**RESPONDENT(S):**  
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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  
05-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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**K. Ramakrishnan, J.**

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**Crl.R.P.No.206 of 2015**

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**Dated this, the 05<sup>th</sup> day of March, 2015.**

**ORDER**

Petitioners in C.M.P.No.656/2014 in C.C.No.534/2010 on the file of the Judicial First Class Magistrate Court - I, Alappuzha are the revision petitioners herein.

2. The petitioners were arrayed as accused in C.C.No.534/2010 on the file of the Judicial First Class Magistrate Court - I, Alappuzha alleging offences under Sections 120(B), 420 read with Section 34 of Indian Penal Code.

3. The case was originated on the basis of a private complaint filed by the de facto complainant which was forwarded to the police for investigation under Section 156(3) of Code of Criminal Procedure and crime was registered and after investigation, final report was filed and it was taken on file as C.C.No.534/2010 on the file of the Judicial First Class Magistrate Court - I, Alappuzha. Though the revision petitioners appeared and after hearing both sides, charge was framed and case was posted for evidence, due to non-

availability of the witnesses, the trial of the case could not be completed. The petitioners are permanently residing in Delhi and they are finding it difficult to come to Alappuzha and conduct the case. Further, being an accused, they are having right to have speedy disposal of the cases under Article 21 of the Constitution of India. Further, there are other cases also pending against them as C.C.Nos.535/2010, 536/2010 and 537/2010 before the same court based on the same transaction but, complaint filed by different complainants. Since the court was simply adjourning the case, they filed C.M.P.No.656/2014 under Section 258 of Code of Criminal Procedure for dropping the proceedings. But, that petition was dismissed by the learned magistrate by the impugned order which is being challenged by the petitioners by filing this revision.

4. Considering the nature and scope of enquiry, this court felt that the revision can be disposed of at the admission stage itself after hearing the Counsel for the revision petitioner and the Public Prosecutor.

5. The Counsel for the revision petitioner submitted that his grievance is that in spite of repeated non bailable

warrants issued, the presence of the witnesses including the de facto complainant could not be procured and the case is being unnecessarily adjourned by the court below. So, he is entitled to get speedy trial of the case and court is not expected to prolong the matter indefinitely for non availability of the witnesses.

6. The petition was opposed by the Public Prosecutor on the ground that there is no illegality committed by the court below.

7. It is an admitted fact that on the basis of a private complaint filed by the de facto complainant against the petitioners and others which was forwarded to the police for investigation by the learned magistrate under Section 156(3) of Code of Criminal Procedure, a crime was registered alleging offences under Sections 120(B), 420 read with Section 34 of Indian Penal Code and after investigation, final report was filed against petitioners and others for the said offences and that was taken on file as C.C.No.534/2010 on the file of the Judicial First Class Magistrate Court - I, Alappuzha. Accused Nos. 3 and 4 did not appear and the present petitioners appeared and charge was framed against them and they pleaded not guilty

and the learned magistrate decided to proceed with the case as against them. It is also seen from the order itself that in spite of summons and warrants issued to the witnesses, their presence could not be procured and steps are being taken to procure their presence and complete the examination. The petitioners filed the application under Section 258 of Code of Criminal Procedure seeking the court to stop the proceedings and drop the proceedings.

8. Section 258 of Code of Criminal Procedure reads as follows:

**“Power to stop proceedings in certain cases:-** In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.”

9. It is clear from the above Section that, this can be applicable only to cases of summons case instituted otherwise than complaint. The offence alleged are 120(B), 420 read with Section 34 of Indian Penal Code and it is not a summons case and it is a warrant trial case. So, under the circumstances, court below was perfectly justified in coming to the conclusion that the case cannot be closed under Section 258 of Code of

Criminal Procedure and rightly dismissed the application. There is no illegality committed by the court below in this regard. But, however, the apprehension of the petitioners is that the trial of the case on account of non-availability of the witnesses will be unnecessarily prolonged and that will affect their right of speedy trial as provided under Article 21 of the Constitution of India. But, even in common cause case as modified by the subsequent decision by the Hon'ble Supreme Court, certain guidelines were given as to how the cases pending before the court for long time have to be dealt with. (See **Common Cause Vs. Union of India [1996 KHC 455]**, **Common Cause, A Regd. Society through its Director Vs. Union of India [1997 KHC 70]**, **Raj Deo Sharma Vs. State of Bihar [2000 KHC 85]** and **Ramachandra Rao Vs. State of Karnataka [2002 KHC 412]**). But, at the same time, the Apex court has given discretion to the courts in applying the guidelines provided therein considering the nature and gravity of the offence and excluded certain economic offences as well. So, the court below is directed to consider those guidelines and try to dispose of the case as expeditiously as possible at any rate within six months from the date of receipt of this order.

With the above direction and observation, the revision petition is dismissed.

Office is directed to communicate this order to the concerned court immediately.

Sd/-  
**K.Ramakrishnan, Judge.**

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*[True copy]*

*P.A to Judge*