

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

Crl.Rev.Pet.No. 523 of 2015 ()

AGAINST THE ORDER IN CC 629/2009 of JUDICIAL MAGISTRATE OF FIRST
CLASS-III, NEYYATTINKARA DATED 12-02-2015

REVISION PETITIONER/3RD ACCUSED:

SIVAKUMAR AGED 46 YEARS
S/O. RAJAMMA, V.R. NIVAS, MANKALA
KANJIRAMKULAM, NEYYATTINKARA, THIRUVANANTHAPURAM.

BY ADV. SRI.BLAZE K.JOSE

RESPONDENTS/COMPLAINANT/ACCUSED 1 & 2/DE-FACTO COMPLAINANT :

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.
2. LALLY VARGHESE,
LAL VIHAR, PLAMTHOTTAM, THIRUPURAM VILLAGE - 695 114.
3. SULOCHANA R.
D/O. RAJAMMA, V.R NIVAS, MANKALA
KANJIRAMKULAM, THIRUVANANTHAPURAM - 695 121.
4. K.S. SASIKUMAR,
SECRETARY-IN-CHARGE, PRASHANTH, KARUCHAL
PULLUVILA P.O., NOW MANAGING COMMITTEE MEMBER
KANJIRAMKULAM CO-OPERATIVE BANK LIMITED NO. 3970
KANJIRAMKULAM P.O., THIRUVANANTHAPURAM- 695 121.

R4 BY ADV. SRI.P.N.MOHANAN
R2-R3 BY ADVS. SMT.K.P.SANTHI
SRI.RILGIN V.GEORGE
R1 BY PUBLIC PROSECUTOR SRI.V .S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 11-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE 1 : COPY OF THE GOVERNMENT ORDER NO.50075/L4/11/HOME
DATED 23.09.2013

ANNEXURE 2 : COPY OF THE PETITION FILED BY THE PROSECUTOR
DATED 24.07.2014 IN CC NO.629/2009 ON THE FILES OF
JFMC-III, NEYYATTINKARA

ANNEXURE 3 : CERTIFIED ORDER IN CC NO.629/2009 DATED 12.02.2015
ON THE FILES OF JFMC-III, NEYYATTINKARA.

RESPONDENTS' ANNEXURES : NIL

//TRUE COPY//

P.A.TO JUDGE

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B.SUDHEENDRA KUMAR, J.

Crl.R.P. No. 523 of 2015

Dated this the 11th day of September, 2015

ORDER

This revision petition has been filed challenging the order of the court below dismissing the application filed by the Assistant Public Prosecutor under Section 321 Cr.P.C, praying for withdrawing from the prosecution.

2. The de-facto complainant filed a complaint before the court below against the accused there in, alleging offences under Sections 468, 464 and 420 r/w 34 IPC.

3. The allegation in the complaint was that the 2nd accused filed an application for a loan. The 1st accused was the Secretary of the bank at that time. With the assistance of the 1st accused, the 2nd accused availed the loan. The loan was sanctioned by the 1st accused, who was the then Secretary of Kanjiramkulam Co-Operative Bank, without verifying the documents produced by the 2nd accused. Later on, it was revealed that the loan was

sanctioned to the 2nd accused without verifying the records. It was further revealed that the property placed as security for availing the loan, belonged to a 3rd party. In the said circumstances, the above said complaint was filed before the court below.

4. The above complaint was forwarded by the court to the Police for investigation and report under Section 156(3) Cr.P.C. Accordingly, the crime was registered. After completing the investigation, the police filed the final report before the court.

5. The revision petitioner and the other accused appeared before the court below in response to the process issued by the court below. The charge was framed against the accused. While so, an application was filed by the learned Additional Assistant Public Prosecutor before the court under Section 321 Cr.PC praying for withdrawing from the prosecution. The court below dismissed the said application as per the order impugned.

6. The learned counsel for the revision petitioner has

submitted that the learned Assistant Public Prosecutor stated in the application about his personal satisfaction on the basis of Annexure 1 letter given by the Government. The learned counsel for the revision petitioner further submitted that the learned Assistant Public Prosecutor stated in Paragraph 6 of the petition that the entire amount availed as loan by the 2nd accused was repaid by the 2nd accused and hence the loan account was closed. It was further stated by the learned Assistant Public Prosecutor in the petition that there was only a remote chance for culminating the trial in conviction. It is further stated in the petition that the withdrawal of the case was necessary for the large consideration of public peace and security of that locality. The court below simply observed that the withdrawal from prosecution would not serve the larger public interest.

7. It appears from the order impugned that the learned Magistrate did not state any reason as to why the

withdrawal would not serve public interest. It is also not stated as to whether the withdrawal would cause injustice to any person. The Court must be satisfied that the Assistant Public Prosecutor considered the materials in good faith and reached the conclusion that the withdrawal from the prosecution would serve public interest, before permitting to withdraw from the prosecution. The court must also consider whether the grant of consent may thwart or stifle the course of law or result in manifest injustice. The Apex Court in **Abdul Karim v. State of Karnataka (AIR 2001 SC 116)** held thus:-

“The law, therefore, is that though the Government may have ordered, directed or asked a Public Prosecutor to withdraw from a prosecution, it is for the Public Prosecutor to apply his mind to all the relevant material and, in good faith, to be satisfied thereon that the public interest will be served by his withdrawal from the prosecution. In turn, the court has to be satisfied, after considering all that

material, that the Public Prosecutor has applied his mind independently thereto, that the Public Prosecutor, acting in good faith, is of the opinion that his withdrawal from the prosecution is in the public interest, and that such withdrawal will not stifle or thwart the process of law or cause manifest injustice”.

In the instant case, the order appears to be very cryptic. It does not mention any reason as held by the Apex Court in the above decision before declining permission to withdraw from prosecution. In the said circumstances, the order impugned cannot be said to be legal and proper and consequently, the same is to be set aside and accordingly, I order so.

In the result, this revision petition stands allowed setting aside the order impugned and the matter is remitted to the court below for fresh consideration of the application filed by the learned Assistant Public Prosecutor in accordance with law, in the light of the decision of the Apex

Court in Abdul **Karim v. State of Karnataka** (supra).

Sd/-
B.SUDHEENDRA KUMAR
JUDGE

//TRUE COPY//

P.A.TO JUDGE

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