

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

Cr1.Rev.Pet.No. 594 of 2015

IN CC 641/2014 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT, MALAPPURAM DATED 20-03-2015
CRIME NO. 125/2014 OF VENGARA POLICE STATION , MALAPPURAM

REVISION PETITIONER/DEFACTO COMPLAINANT:

SAMEERA PULIKKAL, AGED 31 YEARS,
S/O.HAMSA HAJI, PULIKKAL HOUSE, CHERUR P.O,
MALAPPURAM DISTRICT.

BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY

RESPONDENTS/STATE/ACCUSED:

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1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM-682031 (CRIME NO.125/2014 OF VENGARA POLICE
STATION, MALAPPURAM DISTRICT) .
 2. ABDUL
S/O.MOIDEEN HAJI, VALIYAPARAMBIL HOUSE, CHEROOR,
KANNAMANGALAM AMSOM-671123.
 3. ABDUL SAMMED,
S/O.MUHAMMED, KAVUNGUMTHOTTATHIL HOUSE, CHEROOR P.O.
KANNAMANGALAM AMSOM-671123.
 4. MUHAMMEDALI,
S/O.YOUSEF, PAKKIYAN HOUSE, CHEROOR P.O,
KANNAMANGALAM AMSOM, 671123.
 5. KABEER P.P.
S/O.AHAMMED KOYA, PALAPETTY HOUSE, KAPPIL,
CHEROOR, KANNAMANGALAM AMSOM-671123.

R4&5 BY ADV. SRI.M.RAMESH CHANDER (SR.)
R2-R3 BY ADV. SRI.ANEESH JOSEPH
R1 BY PUBLIC PROSECUTOR SRI.JUSTIN JACOB

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 26-11-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

P.UBAID, J.

Crl.R.P No.594 of 2015

Dated this the 26th day of November, 2015

O R D E R

The revision petitioner herein is the defacto complainant in C.C. No.641/2014 of the Judicial First Class Magistrate Court, Malappuram. The respondents 2 to 5 are the accused in the said case. The offence involved in the said case are under Sections 341, 323, 294(b), 354(B) and 506(i) r/w Section 34 of the Indian Penal Code. The police registered the said crime on the complaint of an aggrieved woman. Pending the proceedings, the learned Assistant Public Prosecutor in charge of the case made an application for permission for withdrawal from prosecution. Nobody opposed the said application. It appears that notice was not given to the victim of offence by the learned Magistrate. Without going to the merits of the request for withdrawal, the learned Magistrate passed a cryptic order on 20.3.2015 which does not contain any reason for the order. The learned Magistrate allowed withdrawal under Section 321 of the Code of Criminal Procedure, and accordingly discharged the accused. The said order is under challenge in this revision brought by the defacto complainant.

2. On hearing both sides and on a perusal of the impugned order, I find that the matter will have to be properly and legally decided by the learned Magistrate. This Court is not happy with the way in which the learned Magistrate discharged her functions as a judicial officer. When an application for withdrawal comes, and when there is an aggrieved lady behind the prosecution, it is quite appropriate that she also be heard before taking a decision. Whether the victim is heard or not, the order passed by the court granting or disallowing withdrawal must be a reasoned order. It cannot at all be a cryptic order, simply allowing or rejecting the request.

In the result, the revision petition is allowed. The impugned order passed by the court below is set aside and the learned Magistrate is directed to consider the request for withdrawal properly under the law, take a decision according to law, and pass a reasoned order either allowing or disallowing the request for withdrawal. The court below is also directed to hear the defacto complainant before taking a decision on the request for withdrawal.

**P.UBAID
JUDGE**

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