

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

Crl.Rev.Pet.No. 701 of 2015 ()

(AGAINST THE ORDER IN CRL.M.P.36/2014 IN ST.416/2013 OF CJM,
PATHANAMTHIITA)

REVISION PETITIONERS/ACCUSED 1 TO 5:

1. MARYKUTTY DANIEL, AGED 81 YEARS
W/O.LATE T.K.DANIEL, POPULAR TOWERS, VAKAYAR
KONNI, PATHANAMTHITTA DISTRICT.
2. THOMAS DANIEL @ ROY DANIEL, AGED 60 YEARS,
S/O.LATE T.K.DANIEL, POPULAR TOWERS, VAKAYAR
KONNI, PATHANATHITTA DISTRICT.
3. PRABHA THOMAS, W/O.THOMAS DANIEL,
POPULAR TOWERS, VAKAYAR, KONNI
PATHANAMTHITTA DISTRICT.
4. POPULAR FINANCE POPULAR TOWERS
VAKAYAR, KONNI, PATHANAMTHITTA DISTRICT
A PARTNERSHIP FIRM REPRESENTED BY ACCUSED NOS.1 TO 3
5. POPULAR TRADERS, KONNI, REGISTERED OFFICE AT POPULAR TOWERS
PATHANAMTHIITA. A PARTNERSHIP FIRM REPRESENTED BY
ACCUSED NOS.1 TO 3.

BY ADVS.SRI.K.SHAJ
SRI.SAJJU.S

RESPONDENTS/STATE:

1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM
2. K. AJAYAKUMAR, S/O.KARUNAKARAN NAIR
THE INSPECTING ASSISTANT COMMISSIONER
COMMERCIAL TAXES
PATHANAMTHITTA RESIDING AT VIDYA BHAVAN
PONKUNNAM.P.O, KOTTAYAM DISTRICT.

R2 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
19-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P.No.701 of 2015

Dated this the 19th day of November 2015

O R D E R

When this matter has been taken up for hearing, the learned counsel for the revision petitioners has prayed for granting permission to withdraw the revision petition.

2. Heard both sides.

3. The order challenged in this revision petition is the order passed by the court below dismissing C.M.P. No.36 of 2014 filed by the petitioner praying for discharge. Admittedly, this is a summons trial case.

4. The Apex Court in **Adalat Prasad v. Rooplal**

Jindal [2004(7) SCC 338] held in paragraph 15 thus:-

“It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provisions of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code.”

5. The Apex Court in **Urmila Devi v and Yudhvir Singh** [2013(15) SCC 624] held that the order issued by the Magistrate deciding to summon an accused in exercise of his power under Sections 202 to 204 of the Code would be

an order of intermediary or quasi-final in nature and not interlocutory in nature. The Apex Court further held in **Urmila Devi** (supra) that since such an order is intermediary or quasi-final in nature, the revisionary jurisdiction provided under Section 397 of the Code can be worked out by the aggrieved party. The Apex Court in **Urmila Devi** (supra) further held that such an order of a Magistrate deciding to issue process or summons to an accused in exercise of his power under Sections 200 to 204 of the Code can always be subject-matter of challenge under the inherent jurisdiction of the High Court under Section 482 of the Code.

6. The above decisions of the Apex Court would make it clear that in a summons case, the Magistrate has no

jurisdiction to discharge the accused after his appearance before the Magistrate Court in response to the process issued from the Court. The remedy available to the aggrieved accused is to invoke the jurisdiction of the High Court under Sections 482 or 397 of the Code or the jurisdiction of the Sessions Court under Section 397 of the Code, challenging the issuance of summons. In the said circumstances, the court below was correct in holding that the court had no jurisdiction to drop the proceedings once cognizance is taken. In view of the above, I find no reason to interfere with the order impugned.

In the result, this revision petition stands dismissed.

However, this order will not take away the rights of the revision petitioners, if any, in seeking for other

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: 5 :

remedies available to them under law.

Sd/-

**B.SUDHEENDRA KUMAR,
JUDGE**

dl/19.11.2015

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PA to Judge