

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

Cr1.Rev.Pet.No. 1032 of 2015 ()

AGAINST THE JUDGMENT IN CC 622/2002 of J.M.F.C.,MALAPPURAM
DATED 26-02-2003

REVISION PETITIONER(S):

C.H.ABDURAHIMAN,
S/O. MAYIN, KOOTILANGADI AMSOM, DESOM
PALLIPPURAM, MALAPPURAM DISTRICT

BY ADV. SRI.K.P.MUJEEB

RESPONDENT(S):

1. STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM
2. KUNHALANKUTTY,
S/O. MUHAMMEDALI,
KOORIMANNILPADIYIL
MELE PALLIPURAM, KOOTILANGADI AMSOM

BY PUBLIC PROSECUTOR SRI. R. GITESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 16-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Crl.R.P.No. 1032 of 2015

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Dated this the 16th day of September, 2015

ORDER

The revision petitioner is the de facto complainant in C.C. No. 622 of 2002 on the files of the Court of Judicial Magistrate of First Class, Malappuram.

2. The prosecution allegation is that at about 6.30 p.m., the revision petitioner was wrongfully restrained by the accused and thereafter, the accused caused hurt to the revision petitioner. The revision petitioner was also abused and threatened by the accused. On the basis of the statement given by the revision petitioner, Crime No. 210/2010 of Malappuram Police Station was

CrI.R.P.No. 1032 of 2015

registered. After completing the investigation, the police filed the final report before the Court.

3. While so, the learned Assistant Public Prosecutor filed an application before the court below under Section 321 Cr.P.C. praying for granting permission to withdraw from the prosecution of the above case. The learned Magistrate as per order impugned, granted permission to withdraw from the prosecution. Aggrieved by the said order, this Revision Petition has been filed.

4. Heard both sides.

5. The learned counsel for the revision petitioner has submitted that the court below did not assign any reason in the order impugned before granting permission to the Assistant Public Prosecutor to withdraw the case and in the said circumstances, the order impugned cannot be proper and correct and consequently, the same is not sustainable.

CrI.R.P.No. 1032 of 2015

6. It appears from the order impugned that the learned Magistrate did not state as to whether the withdrawal was in public interest. It is also not stated as to whether the withdrawal caused injuries 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. The court must also consider whether the grant of consent may thwart or stifle the course of or result in manifest injuries. 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

Crl.R.P.No. 1032 of 2015

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 for granting 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 and the matter is remitted to the court below for fresh consideration of the

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CrI.R.P.No. 1032 of 2015

application filed by the learned Assistant Public Prosecutor in accordance with law and in the light of the decision in Abdul Karim v. State of Karnataka (supra).

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. to Judge