

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

Crl.Rev.Pet.No. 1151 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN CC 396/2011 of J.M.F.C.-I, KOLLAM
DATED 04-11-2014

REVISION PETITIONER/COMPLAINANT:

VICTR CLETUS AGED 54 YEARS
S/O.PATHROSE, VIJO VILASAM, KANJIRACODE VILLAGE
MULAVANA, KOLLAM.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENTS/ACCUSED & STATE:

1. LAL KUMAR AGED 52 YEARS
S/O.KARUTHAKUNJU, ABHIRAMIL HOUSE, NO.311
WARD NO.VI, PERAYAM CHERRY MULAVANA VILLAGE
KOLLAM 691 001.

2. RAJALAKSHNI AGED 39 YEARS
W/O.LALKUMAR, ABHIRAMIL HOUSE NO.311
WARD NO.VI, PERAYAM CHERRY MULAVANA VILLAGE
KOLLAM 691 001.

3. ASWATHI, AGED 31 YEARS D/O.OMANA
ABHIRAMIL HOUSE NO.311, WARD NO.VI
PERAYAM CHERRY MULAVANA VILLAGE, KOLLAM 691 001.

4. STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM 682 031.

R1-R3 BY ADV. SRI.R.MOHANA BABU
R1-R3 BY ADV. SRI.M.AJITH (KARICODE)
R BY PUBLIC PROSECUTOR: SRI REJI JOSEPH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
09.10.2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.R.P.No.1151 of 2015
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Dated this the 9th day of October, 2015

ORDER

The revision petitioner herein is the complainant in C.C.No.396 of 2011 of the Judicial First Class Magistrate-I, Kollam for offences punishable under Sections 406, 420, 448 and 506 r/w Section 34 of the Indian Penal Code. The case was posted for trial and listed to 04.11.2014. On that day, the complainant was absent, but he was represented. On the ground that witnesses were not present, learned magistrate discharged the accused invoking Section 245 of the Cr.P.C. This is assailed in this revision.

2. Learned counsel for the respondents/accused who appeared and contested the proceedings in revision contended that the complainant was not diligent in prosecuting the matter, which is patent from the records. However, Annexure-AI which is a copy of the proceeding sheet indicates that the complainant was present on 12.01.2011 for recording his sworn statement. Thereafter, there were several postings and ultimately, the matter

was taken up on 25.03.2011 on which date summons was issued to the accused. In the meanwhile, complainant was present on all posting dates. Thereafter, there were several postings till 04.11.2014. On all the above dates, except 17.06.2014, the case was adjourned by notification. The sole date on which the case was taken up was 17.06.2014, on which day, complainant though absent, was effectively represented by the counsel. On that day, summons was issued to witness Nos.1 to 3 and posted to 04.11.2014. On that day also, the complainant was absent but he was represented. The witness were not present. Hence, the accused were discharged under Section 245 of the Cr.P.C. Evidently, from the facts Section 245 Cr.P.C. has no application. However, if the complainant has taken steps on his part and if case is posted for the appearance of the witnesses, learned Magistrate could not have justifiably discharged the accused even under Section 256 Cr.P.C. No laches can be attributed to the complainant. He was also effectively represented on that day. Considering these facts, the impugned order does not appear to be legally sustainable. Even otherwise, Court could not have discharged the accused on above ground. In the light of the

above, the impugned order is liable to be set aside.

The revision is allowed. Impugned order is set aside and the matter is remanded back to the court below for fresh consideration. Both sides shall thereafter proceed with the case in accordance with law. Learned counsel for the respondents raised an apprehension that in the light of the impugned order, if any, discharge application is filed by him it may not be entertained. I find no reason for his apprehension and the court below shall consider such application if any, filed by the accused, in accordance with law.

Sd/-
SUNIL THOMAS
Judge

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