

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

Crl.Rev.Pet.No. 731 of 2014 ()

CC 365/2010 of J.M.F.C. - I, CHALAKUDY
CRIME NO. 198/2010 OF CHALAKKUDY POLICE STATION , TRISSUR

REVISION PETITIONER/1ST RESPONDENT/1ST ACCUSED:

MANI @ KALABHAVAN MANI
S/O.RAMAN, KUNNASSERY HOUSE, CHENATHUNADU DESOM
EAST CHALAKKUDY VILLAGE.

BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SRI.M.REVIKRISHNAN
SRI.VIPIN NARAYAN

RESPONDENTS/REPODENT/PETITIONER/COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

ADDL.2 RAJEESH, S/O.PURUSHOTHAMAN
MARUTHOOR MANAYIL
ARIMBOOR DESOM, ARIMBOOR VILLAGE, THRISSUR
(MANAGER, DREAMS WORLD WATER PARK, KANJIRAPPILLY)

ADDL.3. PRASANTH, S/O.GANGADHARAN PILLAI
VALLATTU THARAYIL VEEDU, UMBERNADU DESOM,
MAVELIKKARA, THEKKEKARA VILLAGE

ADDL.4. SALI, S/O.ASHARAF, PLANTHARAYIL VEEDU,
KATTAPPANA DESOM, KATTAPPANA VILLAGE, IDUKKI,

ARE IMPEADED AS ADDL. RESPONDENTS 2 TO 4 AS PER ORDER
DT.6.11.2014 IN CRL.M.A.6894/2014 IN CRL.R.P.731/2014.

R2-R4 BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR
R2-R4 BY ADV. SRI.JELSON J.EDAMPADAM
R1 BY PUBLIC PROSECUTOR, SHRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
22-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.SUDHEENDRA KUMAR, J.

Crl.R.P. No.731 of 2014

Dated this the 22nd day of September 2015

O R D E R

The revision petitioner is the first accused in C.C. No.365 of 2010 on the files of the Court of the Judicial Magistrate of First Class, Chalakkudy.

2. The prosecution allegation is that on 9.2.2010 at about 4.00 p.m., the revision petitioner and the other accused criminally trespassed into the Dream World Water Theam Park and attacked the employees of the said park when they denied the free entry into the park. On the said allegation, crime was registered under Sections 143, 147, 448 and 323 read with Section 149 I.P.C. After completing

the investigation, final report was also filed before the court.

3. After complying with the legal formalities, the court below posted the case for trial. At that point of time, the learned Assistant Public Prosecutor filed C.M.P. No.13456 of 2013 before the court below, praying for granting permission for withdrawing of the case from prosecution, under Section 321 Cr.P.C. The learned Magistrate after hearing the learned Assistant Public Prosecutor, learned counsel for the revision petitioner and also the *defacto complainant*, passed the order impugned declining to grant sanction to withdraw from prosecution. Aggrieved by the said order, this revision petition has been filed.

4. Heard.

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

6. The learned counsel for the *defacto complainant*, on the other hand, submitted that the court below had considered the entire materials and came to the conclusion that there was no ground for according sanction for withdrawing from prosecution and accordingly, the court below rightly dismissed the petition.

7. It appears from the order impugned that the learned Magistrate did not state in the order impugned about the reason as to why the learned Magistrate held that the granting of permission to withdraw from prosecution would be against the public interest and peace. The learned Magistrate also did not state as to whether the withdrawal would cause any injustice to any person. The Court must be satisfied that the learned Assistant Public Prosecutor considered the materials in good faith and reached the conclusion that the withdrawal from prosecution would subserve the public interest. The court must also consider whether the grant of sanction will thwart or stifle the course of law or result in manifest injustice.

8. 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”.

9. The Apex Court in **Bairam Muralidhar v. State of**

Andhra Pradesh [2014(10) SCC 380],

“It is obligatory on the part of the court to satisfy itself that from the material it can reasonably be held that the withdrawal of the prosecution would serve the public interest. It is not within the domain of the court to weigh the material. However, it is necessary on the part of the court to see whether the grant of consent would thwart or stifle the course of law or cause manifest injustice. A court while giving consent under Section 321 of the Code is required to exercise its judicial discretion, and judicial discretion, as settled in law, is not to be exercised in a mechanical manner. The court cannot give such consent on a mere asking. It is expected of the court to consider the material on record to see that the application had been filed in good faith and it is in the interest of public interest and justice. Another aspect the court is obliged to see is whether such withdrawal would advance the cause of justice. It requires exercise of careful and concerned discretion because certain crimes are against the State and the society as a collective demands justice to be done. That maintains the law and order situation in the society. The Public Prosecutor cannot act like the post office on

behalf of the State Government. He is required to act in good faith, peruse the materials on record and form an independent opinion that the withdrawal of the case would really subserve the public interest at large. An order of the Government on the Public Prosecutor in this regard is not binding. He cannot remain oblivious to his lawful obligations under the Code. He is required to constantly remember his duty to the court as well as his duty to the collective.”

10. In the instant case, the order of the learned Magistrate is silent about the reasons as held by the Apex Court in the above decisions for not having granted permission to withdraw from the prosecution. In the said circumstances, the order impugned cannot be said to be legal, proper and correct and consequently, the same is to be set aside and I do so.

In the result, this revision petition stands allowed setting aside the order impugned and the matter is remanded to the court below for fresh consideration of C.M.P. No.13456 of 2014, in accordance with law, in the light of the decisions of the Apex Court in **Abdul Karim** (supra) and **Bairam Muralidhar** (supra), as expeditiously as possible, affording reasonable opportunity to both sides for hearing.

The parties, personally or through counsel, shall appear before the court below on 20.10.2015.

Sd//

B.SUDHEENDRA KUMAR, JUDGE.

dl

/ True copy /

PA to Judge