

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

Crl.Rev.Pet.No. 1595 of 2015 ()

CRL.M.P.NO.3001/2015 IN SC NO.1325/2007 OF THE VITH ADDITIONAL
SESSIONS COURT, KOLLAM

REVISION PETITIONER/ACCUSED:

GABRIEL DANIEL, AGED 33 YEARS
S/O.DANIEL, CHANDRATHIL VEEDU, URUKUNNU
THENMALA, KOLLAM DISTRICT.

BY ADVS.SRI.C.RAJENDRAN
SRI.K.R.RANJITH

RESPONDENT(S)/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

R BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 14-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

B. SUDHEENDRA KUMAR, J.

Crl.R.P. No.1595 of 2015

Dated this the 14th day of December, 2015

ORDER

The revision petitioner is the accused in S.C.No.1325 of 2007 on the files of the VIth Additional Sessions Court, Kollam. The revision petitioner filed C.M.P No.3001 of 2015 before the court below under Section 227 of the Code, praying for discharge. The court below dismissed the said petition. Aggrieved by the said order, this revision petition has been filed.

2. Heard.

3. The prosecution case is that on 12.3.2000 at about 9 p.m., the revision petitioner with the intention to cause the death of deceased George @ Thankachan, enticed the deceased to his house to consume alcohol. The revision petitioner administered poison to the deceased through alcohol. Thereafter, the revision petitioner wrapped him in a blanket after tying a plastic rope around his neck

tightly. On the next day, he was taken from there and thrown into a canal for the purpose of disappearance of the evidence of the commission of the offence of murder.

4. The learned counsel for the revision petitioner has submitted that there is no material before the court to connect the revision petitioner with the commission of the offence and in the said circumstances, the revision petitioner is entitled to discharge under Section 227 of the Code.

5. The court below, after going through the records, found that the statement of CW7 to CW18 would show that the revision petitioner was seen in the company of the deceased during the night on 12.3.2000. The statement of CW3 and CW4 would show that the wife of the deceased had talked with the revision petitioner during the night of 12.3.2000. The chemical analysis report would show that viscera of the deceased contained carbo-furidan, which is a poisonous substance. The postmortem certificate coupled with the chemical analysis report would show that the deceased died due to the consumption of carbo-furidan. The recovery under

Section 27 of the Evidence Act was also effected in this case. The provision items purchased by the deceased on 12.3.2000 were also seized from the house of the revision petitioner by the police.

6. The learned counsel for the revision petitioner has argued that the original of the chemical analysis report was not produced before the court and in the said circumstances, there is reasonable doubt that the true copy of the report produced by the prosecution is a concocted document and consequently, the revision petitioner is entitled to discharge under Section 227 of the Code.

7. It is true that the original of the chemical analysis report was not produced before the court. However, whether the secondary evidence to be permitted as provided under Section 65 of the Evidence Act is a matter to be decided by the court below during trial and it is not a matter to be considered at this stage. Even if the original certificate is not available, the prosecution can very well adduce secondary evidence, if the conditions specified under Section 65 of the Evidence Act

are complied with. For the said reason, the argument in this regard cannot be accepted.

Having gone through the relevant inputs, I am satisfied that the court below correctly observed that there was sufficient ground for proceeding against the revision petitioner for the offences under Sections 302 and 301 IPC and consequently, I find no infirmity in the order impugned warranting interference by this Court.

In the result, this revision petition stands dismissed.

However, I make it clear that I have not made any observation regarding the merits of the case and the observations made in this order, are only for the purpose of deciding this revision petition. Therefore, the court below shall proceed with the case in accordance with the law, untrammelled by any of the observations made in this order.

Sd/-

B. SUDHEENDRA KUMAR
JUDGE

Scl.

True Copy

PA to Judge