

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. 2153 of 2014

AGAINST THE ORDER IN CMP.2314/2013 IN
CC 95/2012 of JUDL. MAGISTRATE OF FIRST CLASS, KOTHAMANGALAM

REVISION PETITIONER/ACCUSED NO.1:

UNNIRAJA,S/O.NEELAMBARAN, AGED 56 YEARS
CHANDNI NIVAS, CHIYYARAM, SUPERINTENDENT OF POLICE
CRIME BRANCH, THRISSUR
NOW WORKING AS SUPERINTENDENT OF POLICE, KANNUR.

BY ADVS.SRI.P.N.SUKUMARAN
SRI.K.A.ANAS

RESPONDENTS/RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA AT ERNAKULAM.
 2. JAFFER,, AGED 33 YEARS
S/O.MEERAN, PARUTHIKKATTIL(H), ERAMALLUR DESOM
ERAMALLUR VILLAGE, KOTHAMANGALAM, ERNAKULAM-686 691

R2 BY ADV. SRI.SUNNY MATHEW
R2 BY ADV. SRI.C.C.ANOOP
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.2153 of 2014

Dated this the 22nd day of September 2015

ORDER

The revision petitioner is the first accused in C.C. No.95 of 2012 on the files of the Court of the Judicial Magistrate of First Class, Kothamangalam. The revision petitioner filed C.M.P. No.2314 of 2013 before the court below under Section 245 of the Code of Criminal Procedure praying for discharging the accused.

2. When this matter has been taken up for hearing, the learned counsel for the revision petitioner has pleaded for

granting permission to withdraw this revision petition.

3. The offence alleged against the revision petitioner was the offence under Section 323 read with Section 34 I.P.C. The case was a summons trial case. Therefore, Section 245 of Cr.P.C. had no application in this case. That apart, the Apex Court in **Adalat Prasad v. Rooplal Jindal** [2004(7) SCC 338] held 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.”

4. Once the accused appears before the court in response to the process issued by the Court, the Court is not having the power to discharge the accused in a summons case. In such a situation, the only remedy available to the accused as per the decision of the Apex Court in **Adalat Prasad** (supra) is to approach the High Court under Section 482 Cr.P.C. Since the learned Magistrate had no jurisdiction to discharge the accused, the dismissal of the above said C.M.P. by the learned Magistrate, though for some other reasons, does not call for any interference by this Court. However, I make it clear

that the observations made by the learned Magistrate in the order impugned shall not be used at any stage of the trial of the case.

In the result, this revision petition stands dismissed.

However, the dismissal of this revision petition will not preclude the revision petitioner from seeking all remedies available to him under law.

Sd//

**B.SUDHEENDRA KUMAR,
JUDGE.**

dl

/ True copy /

PA to Judge