

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

OP(Crl.).No. 49 of 2015 (Q)

IN CRL.A 251/2014 of D.C. & SESSIONS COURT, KOTTAYAM

PETITIONER(S):

**SUDHAMOL P.V. AGED 45 YEARS
(WRONGLY STATED AS SUDHA MOHAN)
JUNIOR PUBLIC HEALTH NURSE, PUBLIC HEALTH CENTRE
AYMANAM P.O. RESIDING AT MALLICHIRA HOUSE
MARIYATHURUTHU P.O. MALLUSSERY, KOTTAYAM
KOTTAYAM DISTRICT**

**BY ADVS.SRI.SUBHASH CYRIAC
SMTSHEEBA JOSEPH
SRI.BOBMY MATHEW KOOTHATTUKULAM**

RESPONDENT(S):

**1. MARIYAMMA VARGHESE
W/O.VARGHESE, ELAMOOTTIL HOUSE
KUZHIMATTOM SOUTH, PANCHIKADU
KOTTAYAM DISTRICT - 686 533.**

**2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA - 682 031.**

R BY GOVERNMENT PLEADER SMT. P. MAYA

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 10-02-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP(Crl.).No. 49 of 2015 (Q)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 - TRUE COPY OF THE COMPLAINT FILED BY THE 1ST RESPONDENT

EXT.P2 - TRUE COPY OF THE AFFIDAVIT AND PETITION FOR PLEA BARGAINING

**EXT.P3 - TRUE COPY OF THE ORDER IN ST NO.440/13 OF THE JUDICIAL FIRST CLASS
MAGISTRATE COURT III KOTTAYAM**

**EXT.P4 - TRUE COPY OF THE MEMORANDUM OF CRIMINAL APPEAL 251/14 PENDING
BEFORE THE SESSIONS COURT (FAST TRACK I) KOTTAYAM**

**EXT.P5 - TRUE COPY OF THE CMP NO.2644/14 PENDING BEFORE THE SESSIONS
COURT (FAST TRACK-I) KOTTAYAM.**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

O.P(CrI) No.49 of 2015

Dated this the 10th day of February, 2015.

J U D G M E N T

The petitioner herein, as accused in S.T No.440 of 2013 of the Judicial First Class Magistrate Court -III, Kottayam opted plea bargaining. Accordingly, the parties submitted a mutually satisfactory disposition. The learned Magistrate accepted the mutually satisfactory disposition, and accordingly passed a judgment. Aggrieved by the said judgment, or on the contention that such plea was not voluntarily made by the petitioner, he preferred appeal before the court of Session, Kottayam. Ext. P4 is the copy of the appeal memorandum, and Ext. P5 is copy of the affidavit filed by the petitioner in support of the application filed by him to condone the delay in filing the appeal. Now the accused is before this court under Article 227 of the constitution of India with a prayer to direct the court of Session to hear and dispose of the Ext. P4 and P5 proceedings at the earliest. In fact, such an appeal is not maintainable at all. Section 265 G Cr.P.C provides that the judgment delivered by the Court on accepting plea bargaining shall be final, and no appeal shall lie in any Court against such judgment

except special leave petition under Article 136 of the Constitution of India or writ petition under Article 226 or under Article 227 of the Constitution of India. The petitioner wrongly preferred appeal before the court of Session against the judgment of conviction on plea bargaining. This court cannot give any direction to dispose of such a wrong appeal. The said appeal is not maintainable under the law. The petitioner will have to withdraw the appeal, and bring proper proceeding as provided under Section 265 G Cr.P.C. This Original petition is liable to be dismissed.

In the result this original petition is dismissed.

P.UBAID,
JUDGE

sab