

SESSIONS DIVISION, KALPETTA

IN THE COURT OF THE SESSIONS JUDGE , KALPETTA, WAYANAD

Present : Dr. V.Vijayakumar, LL.M., Ph.D., Sessions Judge, Kalpetta

Friday, the 16th day of March, 2018

25th day of Phalguna, 1939

CRIMINAL REVISION PETITION No. 01/2018

CC No.22/2015 of JFCM-II, S.Bathery

Jamsheer T.K, aged 35 years, S/o.Muhammad,
Thaikkandiyil House, Thrikkaipatta Post,
Thrikkaipatta Village, Vythiri Taluk,
Wayanad District.

}

Revision Petitioner

Vs.

- 1 Sadanandan P.G, aged 63 years, Midhumandiram,
Thrikkaipetta Post, Thrikkaipetta Village,
Vythiri Taluk, Wayanad.
- 2 M.S.Sudha, aged 45 years, D/o.Sadanandan,
Alupadikkal House, Thrikkaipatta Post,
Thrikkaipatta Village, Vythiri Taluk, Wayanad .
- 3 State of Kerala represented by Public Prosecutor,
Kalpetta, Wayanad.

}

Respondents

Revision Petition filed u/s 397 of Cr.P.C to set aside the order passed by the
Judicial First Class Magistrate-II Sulthanbathery in CC 22-2015 dated 12-08-2015.

Jamsheer T.K, aged 35 years, S/o.Muhammad,
Thaikkandiyil House, Thrikkaipatta Post,
Thrikkaipatta Village, Vythiri Taluk,
Wayanad District.

}

Complainant

Vs.

- 1 Sadanandan P.G, aged 63 years, Midhumandiram,
Thrikkaipetta Post, Thrikkaipetta Village,
Vythiri Taluk, Wayanad.
- 2 M.S.Sudha, aged 45 years, D/o.Sadanandan,
Alupadikkal House, Thrikkaipatta Post,
Thrikkaipatta Village, Vythiri Taluk, Wayanad .

}

Accused

This Criminal Revision Petition coming on 14-03-2018 for hearing before me in the presence of Sri.P.K.Rejithkumar, Advocate for the Revision Petitioner and of Sri.Suresh Babu B.U, Advocate for R1 and R2 and Sri.Joseph Mathew, Public Prosecutor for the R3/State and upon haring both sides and perusing the petition, and having stood over for consideration to this day, the court passed the following:

CRIMINAL MISCELLANEOUS PETITION No. 87/2018

Jamsheer T.K, aged 35 years, S/o.Muhammad,
Thaikkandiyil House, Thrikkaipatta Post,
Thrikkaipatta Village, Vythiri Taluk,
Wayanad District.

} Petitioner/
Revision Petitioner

Vs

- 1 Sadanandan P.G, aged 63 years, Midhumandiram,
Thrikkaipetta Post, Thrikkaipetta Village,
Vythiri Taluk, Wayanad.
- 2 M.S.Sudha, aged 45 years, D/o.Sadanandan,
Alupadikkal House, Thrikkaipatta Post,
Thrikkaipatta Village, Vythiri Taluk, Wayanad .
- 3 State of Kerala represented by Public Prosecutor,
Kalpetta, Wayanad.

} Respondents/
Respondents

Petition filed u/s 5 of Limitation Act, 1963 to condone the delay of 784 days in filing Revision Petition against Judgment in CC-22/2015 of the Judicial First Class Magistrate-II Sulthanbathery.

This Criminal Miscellaneous Petition coming on 14-03-2018 for hearing before me in the presence of Sri.P.K.Rejithkumar, Advocate for the Petitioner and Sri.Suresh Babu B.U, Advocate for R1 and R2 and of Sri.Joseph Mathew, Public Prosecutor for the R3/State and upon haring both sides and perusing the petition, and having stood over for consideration to this day, the court passed the following:

COMMON ORDER

This is a petition filed under Section 397 of Cr.P.C against the order in CC 22/2015 of Judicial First Class Magistrate II, Sulthan Bathery dated 12.08.2015.

2. The offence alleged against the accused are punishable u/s 467 and 471 of IPC. The case is based upon a private complaint. But the complainant failed to appear before the court and did not adduce any evidence to show that a case has been made out against the accused. The accused appeared before the court on 23.07.2014 and since then several postings were given for appearance of the complainant. In the above circumstances, it was clear that the complainant is not interested in proceeding with the case and the offence alleged against the accused persons are groundless. Hence, both the accused persons were discharged u/s 245(2) of Cr.P.C.

3. Aggrieved by the said order this revision is filed raising following grounds:- The judgment of the court below is contrary to law and facts, no proper chance was given to prove the case of the complainant, the court below ought to have granted time to the complainant to appear for tendering pre-charge evidence before the court. The court below ought to have conceived that the absence of the complainant before the court for tendering pre-charge evidence is not willful and deliberate. The judgment by acquitting the accused persons is not justifiable one. Hence, the prayer to set aside the impugned judgment.

4. The original order was passed by the Judicial First Class Magistrate-II Bathery on 12th day of August 2015. The learned Magistrate made it clear that the offence alleged against the accused were punishable under Section 467 and 471 of IPC. The case is based upon a private complaint. The complainant failed to appear before

that court and has not adduced any evidence to show that a case has been made out against the accused. The accused appeared before that court on 23.07.2014. Thereafter, several postings were given for the appearance of the complainant. Finally the case was posted to 12.08.2015 for the appearance of the complainant. The complainant failed to appear before that court by inferring that the offence alleged against the accused persons are groundless. Both the accused persons were discharged under Section 245 (2) of Cr.P.C.

5. Now the petitioner /revision petitioner filed this petition under Section 5 of Limitation Act 1963 to condone the delay of 784 days in filing the revision petition before this court stating that there is no willful laches on his part. The reason stated by the petitioner is that the case bundle was misplaced from the office of the petitioner and the bundle was traced out only recently.

6. In the counter statement the respondent challenged that and alleged that the petitioner is trying to drag this respondent into unnecessary legal proceedings and thereby put this respondent into great hardship and pray to dismiss the petition.

7. The petitioner has not adduced any evidence to prove that his version was genuine and reliable.

8. Section 5 of the Limitation Act 1963 enables the court to condone delay in filing appeal or application, if the appellant or applicant satisfies the court that he had “sufficient cause” for not preferring an appeal or making an application within such period. It is true that the expression “sufficient cause” has not been defined in the Act. It is, however, very wide, comprehensive and elastic in nature. It is a fundamental principle that court has to construed that liberally so as to advance the cause of justice. Normally a party who approaches a court of law with a grievance should not be

deprived of hearing on merits, unless there is something to show that there was total inaction, gross negligence or want of bonafides on his part. In interpreting the word “sufficient cause” a pragmatic approach based upon common sense and realities of life should be the guideline aspects.

9. The general approach of the Apex court is that small delays have to be liberally condoned. Whereas, long delays which is causing undue hardship on other side should not be granted. One of the fundamental requirement of law is certainty and predictability in the legal system. If the petition like this is granted, the fundamental requirement of legal system will be jeopardized and this baseless reason to drag the matter, so as to put the respondents in difficulty by a gross negligent petitioner, is not a sufficient reason to allow the delay petition and hence the petition CrI. MP 87/18 is dismissed. Consequently the Revision Petition CrI. R.P 1/18 is also dismissed.

In the result, the Criminal Revision Petition is dismissed along with CrI. MP 87/18.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open court, this the 16th day of March, 2018)

SESSIONS JUDGE

Typed by : Venugopalan Nair P.R
Compared by: Beena K.K
FCS:

SESSIONS DIVISION, KALPETTA
IN THE COURT OF THE
SESSIONS JUDGE, KALPETTA
FAIR COMMON ORDER IN

CRL. R. P No. 01/2018 &
Crl.MP 87/2018
Dated : 16-03-2018

To

- 1 The Judicial First Class Magistrate-II,
Sulthanbathery.
- 2 The Revision Petitioner.
