

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 13TH DAY OF JUNE 2022 / 23RD JYAISHTA, 1944

CRL.REV.PET NO. 385 OF 2022

AGAINST THE ORDER/JUDGMENT IN CMP 5634/2017 OF JUDICIAL
MAGISTRATE OF FIRST CLASS ,SULTHANBATHERY

PETITIONER/COMPLAINANT:

P.K. MINI
AGED 49 YEARS
D/O. LATE KRISHNA PILLAI, PANANGATTU HOUSE,
VAYATHUR KARA, ULIKKAL VILLAGE, IRITTI TALUK,
ULIKKAL P.O., KANNUR DISTRICT, PIN-670705.
BY ADVS.
ARUN SAMUEL
JITHIN BABU A

RESPONDENTS/ACCUSED & STATE:

- 1 SANDEEP K.G.
AGED 31 YEARS
S/O. GOVINDAN, KOZHUVANA HOUSE, CHEERAL
VILLAGE, SULTHAN BATHERY TALUK, CHEERAL P.O.,
WAYANAD DISTRICT, PIN-673595.
- 2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM DISTRICT, PIN-
682031.
BY ADV MATHEW KURIAKOSE

SMT T V NEEMA -SR PP

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 13.06.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

ORDER

The order passed by the Judicial First Class Magistrate's Court-I, Sulthan Bathery (for short, 'the Court below') in CMP No. 5634/2017 dated 24.10.2019 is under challenge in this Crl. Revision Petition.

2. The revision petitioner herein filed a private complaint against the 1st respondent at the Court below alleging that he has committed offences punishable under Sections 420, 465, 354, 294(b), 506(1), 408 and 376 of the IPC.

3. The complaint was taken on file by the Court below as CMP No. 5634/2017 and posted for the sworn statement of the revision petitioner on several occasions. But, the revision petitioner was not present on those occasions. Ultimately, on 24.10.2019, when the case was posted for recording the sworn statement, the revision petitioner or his counsel was absent. Hence, the Court below dismissed the complaint for default as per the impugned order. Challenging the said order, the revision

petitioner has approached this Court.

4. I have heard Sri. Arun Samuel, the learned counsel for the petitioner, Sri. Mathew Kuriakose, the learned counsel for the 1st respondent and Smt. T. V. Neema, the learned Senior Public Prosecutor.

5. It is true that the Court below posted the case for recording the sworn statement of the revision petitioner on six occasions. According to the revision petitioner, he engaged two counsels, but they failed to give intimation in time. It is true that several opportunities were given to the revision petitioner. However, considering the entire facts and circumstances of the case and the reason offered by the revision petitioner for his non-appearance at the Court below, I am of the view that an opportunity has to be given to the revision petitioner to contest his complaint on merits. However, unnecessarily on account of the laches of the revision petitioner, the 1st respondent has been

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dragged to this Court. Hence, 1st the respondent has to be compensated in terms of cost.

6. In the result, the impugned order stands set aside. The Court below shall restore CMP No. 5634/2017 on file and proceed in accordance with law on condition that the revision petitioner shall pay a cost of Rs.5,000/- (Rupees Five Thousand only) to the 1st respondent within a period of two weeks from today. It is made clear that, if the cost is not paid, the impugned order shall stand restored.

This Revision Petition is disposed of as above.

Sd/-

**DR.KAUSER EDAPPAGATH,
JUDGE**

RMV/13/06/2022

APPENDIX OF CRL.REV.PET 385/2022

PETITIONER ANNEXURES

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| Annexure 1 | TRUE COPY OF THE COMPLAINT DATED 29.8.2017 FILED BY THE PETITIONER/COMPLAINANT IN C.M.P.NO.5634/2017 ON THE FILE OF THE HON'BLE JUDICIAL FIRST-CLASS MAGISTRATE-I, SULTAN BATHERY, WAYANAD DISTRICT. |
| Annexure 2 | CERTIFIED COPY OF THE DIARY EXTRACT DATED NIL IN C.M.P.NO.5634/2017 ON THE FILE OF THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE-I, SULTAN BATHERY, WAYANAD DISTRICT. |
| Annexure 3 | A TRUE COPY OF THE JUDGMENT DATED 26.10.2021 PASSED BY THIS HON'BLE COURT IN CRL.L.P. (FILING NO.8035) OF 2021. |
| Annexure 4 | A TRUE COPY OF THE ORDER DATED 22.10.2021 PASSED BY THIS HON'BLE COURT IN WP(C) NO.22599 OF 2021. |