

CRL.REV.PET NOS. 23 & 268 OF 2017



2025:KER:43501

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 18TH DAY OF JUNE 2025 / 28TH JYAISHTA, 1947

CRL.REV.PET NO. 23 OF 2017

AGAINST THE ORDER DATED 07.12.2016 IN
CRL.M.P.NO.7326/2016 IN CC NO.689 OF 2009 OF JUDICIAL
MAGISTRATE OF FIRST CLASS, THIRUVALLA

REVISION PETITIONER/ACCUSED:

GEORGE ALEXANDER @ PRINCE
AGED 68 YEARS, S/O.GEORGE SAMUEL,
PRINCILY VILLA, ASRAMAM , KOLLAM DISTRICT

BY ADV SRI.MILLU DANDAPANI

RESPONDENT/RESPONDENT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
THROUGH THE SUB INSPECTOR OF POLICE,
PULIKKEZHU POLICE STATION, VALANJAVATTOM P.O.,
THIRUVALLA, PIN-689104

OTHER PRESENT:

SRI.E.C.BINEESH-SR.PP

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 18.06.2025, ALONG WITH CRL.REV.PET.268/2017, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CRL.REV.PET NOS. 23 & 268 OF 2017



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 18TH DAY OF JUNE 2025 / 28TH JYAISHTA, 1947

CRL.REV.PET NO. 268 OF 2017

CRIME NO.204/2010 OF PANUR POLICE STATION, KANNUR

AGAINST THE ORDER DATED 28.07.2015 IN C.M.P.NO.1203 OF
2015 IN SC NO.684 OF 2013 OF ADDITIOANL ASSISTANT SESSIONS

COURT, THALASSERY

REVISION PETITIONERS/ACCUSED NOS.1 TO 5 AND 7 TO 9:

- 1 ARIYATHAN PURUSHU
 AGED 45 YEARS
 S/O.CHATHUKUTTY, ALATHANTAVIDA HOUSE,
 PUTHUR AMSOM, CENDAYAD P.O., THALASSERY TALUK,
 KANNUR DISTRICT, PIN - 670 692.
- 2 SHAJI ALIAS BABOOTTY
 AGED 30 YEARS
 S/O.ACHUTHAN, OORANDIYIL HOUSE,
 PUTHUR AMSOM, CENDAYAD P.O., THALASSERY TALUK,
 KANNUR DISTRICT, PIN - 670 692.
- 3 KALLIL PARAMBATH BABU
 AGED 39 YEARS
 S/O.KUNHIRAMAN, KALLIL PARAMBATH HOUSE,
 PUTHUR AMSOM, CENDAYAD P.O., THALASSERY TALUK,
 KANNUR DISTRICT, PIN - 670 692.
- 4 RATHEESH A.P.
 AGED 29 YEARS

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S/O.KRISHNAN, ALAMULLA PARAMBATH HOSUE,
PUTHUR AMSOM, CENDAYAD P.O., THALASSERY TALUK,
KANNUR DISTRICT, PIN - 670 692.

5 PUTHANPARAMBATH SHIJITH
AGED 27 YEARS
S/O.BALAN, PUTHAN PARAMBATH HOUSE,
PUTHUR AMSOM, CENDAYAD P.O., THALASSERY TALUK,
KANNUR DISTRICT, PIN - 670 692.

6 JITHIN
AGED 31 YEARS
S/O.ASHOKAN, KONIYAKOTT HOUSE,
PUTHUR AMSOM, CENDAYAD P.O., THALASSERY TALUK,
KANNUR DISTRICT, PIN - 670 692.

7 VADAKKEPEEDIKAYULLA PARAMBATH PRAJEESH
AGED 30 YEARS
S/O.GOVINDAN, VADAKKEPEEDIKAYULLA
PARAMBATH HOUSE, PUTHUR AMSOM,
CENDAYAD P.O., THALASSERY TALUK,
KANNUR DISTRICT, PIN - 670 692.

8 O.K.SURENDRAN
AGED 35 YEARS
S/O.P.ANANDAN, POOLAKANDIYIL HOUSE,
PUTHUR AMSOM, CENDAYAD P.O., THALASSERY TALUK,
KANNUR DISTRICT, PIN - 670 692.

BY ADV SRI.R.SURENDRAN

RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

ADDL. R2 *ADDL. R2 TO R6 IMPLEADED
P.V.VENUGOPALAN
ASI OF POLICE, PANOOR POLICE STATION,

CRL.REV.PET NOS. 23 & 268 OF 2017



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PANOR, KANNUR DISTRICT, PIN - 670 692.

ADDL.R3 K.GOPALAKRISHNAN
ADDITIONAL SUB INSPECTOR OF POLICE,
PANOR POLICE STATION, PANOR,
KANNUR DISTRICT, PIN - 670 692.

ADDL.R4 MOHANAN
GHC - 4805, PANOR POLICE STATION,
PANOR, KANNUR DISTRICT, PIN - 670 692.

ADDL.R5 BIJOY C.P
PC 4783, PANOR POLICE STATION,
PANOR, KANNUR DISTRICT, PIN - 670 692.

ADDL.R6 ASSAINAR
PC 5336, PANOR POLICE STATION,
PANOR, KANNUR DISTRICT, PIN - 670 692.
(ADDITIONAL RESPONDENTS 2 TO 6 ARE IMPEADED AS
PER ORDER DATED 02.02.2016 IN CRL.M.A.639/2016 IN
CRL.M.A.NO.27/16 IN UNNUMBERED CRL.R.P/2016)

BY ADVS.
SRI.MAHESH V RAMAKRISHNAN
SRI.A.ARUNKUMAR
SRI.E.C.BINEESH-SR.PP

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 18.06.2025, ALONG WITH CRL.REV.PET.23/2017, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



“CR”

ORDER

Can an accused challenge the order refusing to give consent to withdraw from prosecution against him under Section 360 of BNSS, 2023 (Section 321 of Cr. P.C.)? – This is the common issue that arises for consideration in the above criminal revision petitions.

2. Crl.R. P.No.268 of 2017 pertains to S.C.No.684 of 2013 on the files of the Additional Assistant Sessions Court, Thalassery. The petitioners therein are the accused Nos 1 to 5 and 7 to 9. The offences alleged against them are punishable under Sections 143, 147, 148, 452, 427, 332, 152 r/w Section 149 of IPC, Sections 3 and 5 of Explosive Substances Act, Section 25(1A) of Arms Act, Sections 3(1) r/w 7 of PDPP Act and Section 38 r/w Section 52 of Kerala Police Act. The petitioners appeared before the trial court and were released



on bail. Thereafter, the Public Prosecutor filed an application as CMP No.1203/2015 under Section 321 of Cr.P.C. seeking withdrawal from prosecution. The learned Additional Assistant Sessions Judge dismissed the application as per the order dated 28.07.2015. Crl.R. P.No.268 of 2017 has been filed challenging the said order.

3. Crl. R.P.No.23 of 2017 pertains to C.C. No. 689 of 2009 on the files of the Judicial First-Class Magistrate Court, Thiruvalla. The petitioner therein is the sole accused. The offences alleged against him are punishable under Sections 466 and 468 of IPC. The petitioner appeared before the trial Court and was released on bail. Thereafter, the Assistant Public Prosecutor filed an application as Crl.M.P.No.7326 of 2016 under Section 321 of Cr.P.C. (Section 360 of BNSS) seeking withdrawal from prosecution. The learned Magistrate dismissed the application, as per the order dated



07.12.2016. Crl. R.P.No.23 of 2017 has been filed challenging the said order.

4. When the above revision petitions came up for hearing, this Court expressed doubt as to the maintainability of the revision petitions filed by the accused against the order dismissing the applications filed by the Public Prosecutor/Assistant Public Prosecutor for withdrawal from prosecution under Section 321 of Cr.P.C (Section 360 of BNSS). Hence, the learned counsel for the revision petitioners and the learned Public Prosecutor were requested to address arguments on the maintainability of the revision petitions. They addressed the arguments on the question of maintainability as well as on the merits of the cases.

5. The learned counsel appearing for the revision petitioners in Crl.R.P.No.268 of 2017, Sri.R.Surendran, submitted that the accused, being the real affected party of



the order dismissing the application for withdrawal from prosecution, is entitled to maintain a revision petition, even though the State has not challenged the said order. Reliance was placed on the decision of the Supreme Court in ***Abdul Wahab K. v. State of Kerala and Others*** (AIR 2018 SC 4265), wherein it was held the even a third party or stranger can challenge an order passed under Section 321 of Cr.P.C in revision before the High Court in appropriate case.

6. The learned counsel appearing for the revision petitioner in Crl. R.P.No.23 of 2017, Sri. Millu Dandapani submitted that the revisional power vested with the High Court under Section 397 r/w Section 401 of Cr.P.C is supervisory in nature to examine the legality, correctness, or propriety of any finding, sentence or order of a subordinate court, and it can exercise the said power *suo motu*, even without a formal petition by any of the parties to the



proceedings. In those circumstances, when a manifest illegality in the order dismissing the application for withdrawal from prosecution is brought to the notice of the High Court by an aggrieved party through a revision, the High Court has every power to entertain and decide it. Both the counsel appearing for the revision petitioners submitted that, on merits, the impugned orders are bereft of any reasonings and liable to be interfered with.

7. Per contra, the learned Senior Public Prosecutor, Sri.E.C.Bineesh, submitted that right to apply for withdrawal from prosecution under Section 360 of BNSS (Section 321 of Cr.P.C) is vested with the Prosecutor only, the accused has absolutely no say in it and hence, when the State/Prosecutor has not chosen to file a revision challenging the order of dismissal of the petition for withdrawal from prosecution, the revision at the instance of the accused is not



maintainable. Reliance was placed on ***Anjali Devadas v. State of Kerala*** (2024 KHC OnLine 10107).

8. Under the Scheme of BNSS/Cr.P.C, prosecution of an offender is primarily the responsibility of the executive. The withdrawal of prosecution is an executive function. Section 321 of Cr.P.C (Section 360 of BNSS) provides for premature termination of criminal proceedings at the instance of the Public Prosecutor or Assistant Public Prosecutor, as the case may be. The statutory responsibility to decide upon withdrawal rests with the Public Prosecutor and no one else. Neither the accused nor the victim has a say in it. The provision of Section 321 of Cr.P.C, which gives the Public Prosecutor the power of withdrawal of any case at any stage before judgment is pronounced, reads thus:

“S.321. Withdrawal from prosecution.

The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court at any time before the judgment is pronounced, withdraw



from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdrawal;

(a) If it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required he shall be acquitted in respect of such offence or offences; Provided that where such offence—

(i) was against any law relating to a matter to which the executive power of the Union extends, or

(ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or

(iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty,

and the Prosecutor in charge of the case has not been appointed by the Central Government he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution.”



9. A reading of the above provision indicates two main ingredients for withdrawing from prosecution: (i) the application must be made by the Public Prosecutor or Assistant Public Prosecutor, as the case may be, and (ii) the consent of the court must be obtained. Referring to almost all decisions on the withdrawal from prosecution under Section 321 of Cr.P.C, including that of the Constitution Bench in ***Sheonandan Paswan v. State of Bihar and Others*** (AIR 1987 SC 877), the Supreme Court in ***State of Kerala v. K.Ajith and Others*** [(2021) 17 SCC 318] culled out the broad principles that govern the grant or refusal of consent to withdraw from prosecution. It was observed thus:

“25. The principles which emerge from the decisions of this Court on the withdrawal of a prosecution under Section 321CrPC can now be formulated:

25.1. *Section 321 entrusts the decision to withdraw from a prosecution to the Public Prosecutor but the consent of the court is required for a withdrawal of the prosecution.*

25.2. *The Public Prosecutor may withdraw from a*



prosecution not merely on the ground of paucity of evidence but also to further the broad ends of public justice.

25.3. *The Public Prosecutor must formulate an independent opinion before seeking the consent of the court to withdraw from the prosecution.*

25.4. *While the mere fact that the initiative has come from the Government will not vitiate an application for withdrawal, the court must make an effort to elicit the reasons for withdrawal so as to ensure that the Public Prosecutor was satisfied that the withdrawal of the prosecution is necessary for good and relevant reasons.*

25.5. *In deciding whether to grant its consent to a withdrawal, the court exercises a judicial function but it has been described to be supervisory in nature. Before deciding whether to grant its consent the court must be satisfied that:*

(a) The function of the Public Prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes;

(b) The application has been made in good faith, in the interest of public policy and justice, and not to thwart or stifle the process of law;

(c) The application does not suffer from such improprieties or illegalities as would cause manifest injustice if consent were to be given;

(d) The grant of consent subserves the administration of justice; and

(e) The permission has not been sought with an ulterior



purpose unconnected with the vindication of the law which the Public Prosecutor is duty-bound to maintain.

25.6. *While determining whether the withdrawal of the prosecution subserves the administration of justice, the court would be justified in scrutinising the nature and gravity of the offence and its impact upon public life especially where matters involving public funds and the discharge of a public trust are implicated.*

25.7. *In a situation where both the trial Judge and the Revisional Court have concurred in granting or refusing consent, this Court while exercising its jurisdiction under Article 136 of the Constitution would exercise caution before disturbing concurrent findings. The Court may in exercise of the well-settled principles attached to the exercise of this jurisdiction, interfere in a case where there has been a failure of the trial Judge or of the High Court to apply the correct principles in deciding whether to grant or withhold consent."*

10. Section 321 of Cr.P.C. (Section 360 of BNSS) does not indicate the grounds on which the Public Prosecutor may make the application, or the consideration on which the court is to grant consent. However, it has been judicially interpreted that the object of Section 321 of Cr.P.C. (Section 360 of BNSS) is to reserve power to the Executive Government to withdraw any criminal case on larger



grounds of public policy such as inexpediency of prosecutions for reasons of State; broader public interest like maintenance of law and order; maintenance of public peace and harmony, social economic and political situation; changed social and political situation; avoidance of destabilization of a stable Government and the like. What the court has to do is to give or not to give its consent. The provision contemplates consent by the court in a supervisory, and not in an adjudicatory manner. The Court's duty in dealing with the application under Section 321 of Cr.P.C. (Section 360 of BNSS) is not to reappreciate the grounds which led the public prosecutor to request withdrawal from the prosecution, but to consider whether the Public Prosecutor applied his mind as a free agent uninfluenced by irrelevant and extraneous or oblique considerations. The court must exercise its judicial discretion



by considering all the materials placed before it by the Prosecutor, and on such consideration, the court must either give consent or decline consent. [***Sheonandan Paswan v. State of Bihar and Others***, (1983) 1 SCC 438, ***Abdul Karim v. State of Karnataka***, (2000) 8 SCC 710].

11. Since the trial court's supervisory power of either granting or refusing to grant the permission is a judicial function, the same is liable to correction by the High Court under its revisional powers [***Sheonandan Paswan v. State of Bihar and Others***, (1983) 1 SCC 438]. Thus, if the trial court fails to exercise its discretion judicially while taking a decision either to grant or decline consent for withdrawal from prosecution by considering all materials placed before it independently and applying its mind to find out whether application is moved in good faith, in the interest of public policy and justice, the order passed by it is



amenable to revision before the High Court. But the crucial question is about the *locus standi* of the accused to challenge such an order or to maintain the revision in the absence of a challenge by the State.

12. A Single Judge of this court in ***Binoy v. State of Kerala*** (2024 (4) KLT 192) held that if the Prosecutor/State does not challenge an order refusing consent to withdraw from prosecution, it is not open for the accused to challenge the same. It was observed that the decision to withdraw from prosecution must continue, to enable any challenge against an order refusing consent and if the Prosecutor backtracks from such a decision by not challenging the order of refusal, the application for withdrawal will lose its validity. Another Single Judge also in ***Anjali Devadas*** (supra) held that the revision at the instance of the accused challenging an order dismissing an application under Section 321 of Cr.P.C is not



maintainable. The Supreme Court in ***V.L.S. Finance Limited v. S.P. Gupta and Another*** [(2016) 3 SCC 736) took the view that accused cannot be allowed to contest application to not press for withdrawal from prosecution filed by the Prosecutor.

13. The Constitution Bench of the Supreme Court in ***Sheo Nandan Paswan*** (supra) considered the *locus standi* of a third party/stranger to oppose the withdrawal and to challenge an order granting consent to withdraw passed under Section 321 of Cr.P.C. It was held that if the offence for which a prosecution is being launched is an offence against the society and not merely an individual wrong, any member of the society must have the *locus* to initiate a prosecution as also to resist withdrawal of such prosecution, if initiated. It was further held that if he was entitled to oppose the withdrawal of the prosecution, it must



follow *a fortiori* that on the turning down of his opposition by the court he was entitled to prefer a revision application to the High Court. The contention that the appellant before the Supreme Court, Sri.Sheonandan Paswan, had no *locus* to oppose the withdrawal since it was a matter entirely between the Public Prosecutor and the court and no other person had a right to intervene and oppose the withdrawal and since Sri.Sheonandan Paswan had no standing to oppose the withdrawal, he was not entitled to prefer an appeal against the order of the learned Chief Judicial Magistrate was, thus, rejected. Again the Supreme Court in **Abdul Wahab** (supra) considered the question whether a third party or stranger to prosecution could challenge an order passed under Section 321 of Cr.P.C. That was a case where an application filed by the Prosecutor for withdrawal from prosecution was allowed by the Magistrate. Challenging the



withdrawal, a third party filed revision before the High Court. The High Court dismissed the revision holding that as the revision petitioner was totally a stranger to the litigation, he had no *locus standi* to question the order granting consent to withdraw. The Supreme Court reversed the said findings and held that the dismissal of revision on the ground of *locus standi* was not proper. It was held that the High Court has been conferred the power to entertain the revisions and rectify the errors which are apparent or uncalled for, even if the revision is filed at the instance of a third party. It was observed that the High Court can exercise the power of superintendence to correct the order when it was brought to its notice, even by a stranger. The decision of the Supreme Court in ***Sheo Nandan Paswan*** (supra) or ***Abdul Wahab*** (supra) was not brought to the notice of the Single Judge of this Court in ***Binoy*** (supra) or ***Anjali***



Devadas (supra).

14. The revisional jurisdiction of the High Court under Section 438 r/w Section 442 of BNSS (Section 397 r/w Section 401 of Cr. P.C) refers to its supervisory power to examine the correctness, legality, or propriety of any finding, sentence or order, and the regularity of any proceeding of a subordinate criminal court. Sections 438 or 442 of BNSS (Sections 397 or 401 of Cr.P.C) do not specifically mention who can file a revision, but it is trite that any person aggrieved can file a revision, which can be the accused, victim, State or even third parties in appropriate cases. The High Court can also exercise the power of revision to correct the illegality or impropriety of any order or irregularity of any proceeding of a subordinate criminal court, either *suo motu* or which otherwise comes to its knowledge. If a third party can challenge an order passed under Section 321 of



Cr.P.C (Section 360 of BNSS) in the revision as held in ***Sheo Nandan Paswan*** (supra) and ***Abdul Wahab*** (supra), I see no reason why an accused, who is the real aggrieved party of dismissal of an application for withdrawal from prosecution, cannot maintain a revision under Section 397 r/w Section 401 of Cr.P.C (Section 438 r/w Section 442 of BNSS). No doubt, as rightly pointed out by the learned Public Prosecutor, the withdrawal from prosecution is the prerogative of the Prosecutor and the accused has absolutely no say in it. The accused cannot be allowed to contest such an application as well. But the consent of the court is a pivotal factor under Section 321 of Cr.P.C (Section 360 of BNSS). Since the statute specifically conferred the power upon the court to grant consent for withdrawal from prosecution, the court is under a statutory obligation to apply its judicial mind to all the materials, facts and



circumstances which ultimately weighed the Public Prosecutor to take a decision to withdraw from prosecution as it is the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from prosecution. As such, if the order passed under Section 360 of BNSS (Section 321 of Cr. P.C.) is vitiated by non-application of mind as aforesaid, the accused has every right to bring it to the notice of the High Court by way of a revision. It should be borne in mind that though the main object of Section 360 of BNSS (Section 321 of Cr.P.C) is to withdraw a criminal case on the grounds of larger grounds of public policy, it would also protect the accused from unnecessary and vexatious prosecution. Thus, if the order refusing to grant consent for withdrawal from prosecution under Section 360 of BNSS (Section 321 of Cr.P.C) is vitiated by non-application of mind to the relevant materials, or is



demonstrably illegal, arbitrary, or perverse resulting in miscarriage of justice, the accused being the person aggrieved has every right to challenge the same in revision, even if the State has not chosen to challenge the same. However, the accused cannot challenge the order purely on merits, seeking reappraisal of evidence.

15. Coming to the merits of the cases, a reading of both impugned orders would show that they are not speaking orders. No reasons have been stated in the impugned orders for not allowing the applications filed by the Prosecutor for withdrawal from prosecution. There is no discussion about the various grounds canvassed by the Prosecutor justifying the prayer for withdrawal or materials furnished before the Court. It is the duty of the court to appreciate all the grounds which prompted the Prosecutor to seek withdrawal from the case. A holistic approach is required rather than adherence



to a particular reason [***Abdul Wahab*** (supra)]. It is settled that an application for withdrawal from prosecution should show that the Public Prosecutor has applied his independent mind based on the materials placed before him, including the evidence collected by the prosecution during the investigation. When such an application is decided by the court, it has to apply its judicial mind to assess the materials referred to by the Prosecutor and the reasons shown by him justifying the withdrawal from prosecution. The order granting or declining consent to withdraw from prosecution should reflect the application of mind by the court to the relevant materials furnished by the Prosecutor, which led him to seek withdrawal and also to the grounds canvassed by him justifying the withdrawal. Even though several grounds were specifically canvassed by the Prosecutor in his applications for withdrawal in both cases, none of them were



considered or addressed by either of the trial courts. In ***Binoy*** (supra) and ***Anjali Devadas*** (supra), the challenge was purely on merits. The *locus* of the accused to challenge an order passed under Section 321 of Cr. P.C. refusing to give consent for withdrawal from prosecution, which is vitiated by non-application of mind, was not considered in those decisions. The issue involved in ***V.L.S. Finance Limited*** (supra) was the *locus* of the accused to contest an application to not press the application for withdrawal from prosecution filed by the Prosecutor. Hence, the dictum laid down in none of these decisions could be applied to the facts of the two cases on hand.

For the reasons stated above, the impugned orders are not sustainable and, accordingly, they are set aside. The trial courts are directed to re-consider the respective applications for withdrawal from prosecution and dispose of the same in

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accordance with law, within a period of two months from the date of receipt of a copy of this order.

The Criminal Revision Petitions are disposed of as above.

Sd/-

DR.KAUSER EDAPPAGATH, JUDGE

AS