



2025:KER:67733

CRL.A NO. 12 OF 2015 &
CRL.A NO. 980 OF 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 11TH DAY OF SEPTEMBER 2025 / 20TH BHADRA, 1947

CRL.A NO. 12 OF 2015

AGAINST THE JUDGMENT DATED 22.12.2014 IN SC NO.54 OF
2013 OF SPECIAL COURT FOR THE TRIAL OF OFFENCES UNDER THE
SC/ST (PREVENTION OF ATROCITIES) ACT, MANANTHAVADIY

APPELLANT/ACCUSED :

SHAJI @ SHAIJU
AGED 28 YEARS
S/O KURIAKOSE, KOLATHU
VEEDU, VIRINILAMKUNNU, THRISSLERY, MANANTHAVADY,
WYNAD DISTRICT.

BY ADV SRI.V.SHYAM

RESPONDENT/COMPLAINANT:

STATE OF KERALA
(REPRESENTED BY THE DEPUTY SUPERINTENDENT OF
POLICE, SPECIAL MOBILE
SQUAD, WYNAD, MANANTHAVADY, PANAMARAM POLICE
STATION, CRIME NO.244/2011) REPRESENTED BY THE STATE
PROSECUTOR.

OTHER PRESENT:

SRI. VIPIN NARAYAN (SR.PP)
SRI.S. RAJEEV - AMICUS CURIAE

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
07.01.2015 AND HAVING BEEN FINALLY HEARD ON 16.07.2025
ALONG WITH CRL.A.980/2025, THE COURT ON 11.09.2025 DELIVERED
THE FOLLOWING:



2025:KER:67733

CRL.A NO. 12 OF 2015 &
CRL.A NO. 980 OF 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

THURSDAY, THE 11TH DAY OF SEPTEMBER 2025 / 20TH BHADRA, 1947

CRL.A NO. 980 OF 2025

AGAINST THE ORDER/JUDGMENT DATED 31.07.2024 IN SC NO.390 OF
2021 OF SPECIAL JUDGE NDPS ACT CASES/ADDITIONAL SESSIONS
JUDGE- II, KALPETTA, WAYANAD.

APPELLANT/S/ACCUSED:

BINEESH
AGED 42 YEARS
S/O. BHASKARAN, RESIDING AT KOLKATIL HOUSE,
PADICHIRA.P.O, PADICHIRA, WAYANAD DISTRICT., PIN -
673579

BY ADV SRI.V.A.AJIVAS

RESPONDENTS/STATE AND COMPLAINANT:

STATE OF KERALA
REPRESENTED THROUGH THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM., PIN - 682031

SRI. VIPIN NARAYAN (SR.PP)
SRI.S. RAJEEV - AMICUS CURIAE

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
11.09.2025, 07.01.2015 AND HAVING BEEN FINALLY HEARD ON
16.07.2025 ALONG WITH CRL.A.12/2015, THE COURT ON 11.09.2025
DELIVERED THE FOLLOWING:

**‘C.R’****JUDGMENT****[CRL.A Nos.12/2015, 980/2025]**

Criminal Appeal No. 12/2015 arises from S.C. No. 54/2013 on the file of the Special Court for the trial of offences under the SC/ST (Prevention of Atrocities) Act, Mananthavady, while Criminal Appeal No. 980/2025 arises from S.C. No. 390/2021 on the file of the Special Judge for NDPS Act Cases/Additional Sessions Judge - II, Kalpetta, Wayanad. On the merits, these appeals are not connected. However, they are disposed of by common judgment as the appellants have requested that they be permitted to withdraw the appeals. Based on this submission, this Court is called upon to determine whether these appeals have to be heard on the merits or whether this Court can permit the appeals to be withdrawn. It is not necessary to examine the facts of the individual cases.

2. Sri. Shyam V., the learned counsel representing the appellant in Criminal Appeal No. 12/2015, and Sri. Ajivass V.A., the learned counsel representing the appellant in Criminal Appeal No. 980/2025, submitted that the appellants have served their sentence, and the appellant in Criminal Appeal No. 12/2015 has paid the entire fine



amount, and the appellant in Criminal Appeal No. 980/2025 has served the default sentence (on failure to pay the fine) as well. It is further submitted that the appellants do not wish to prosecute the appeals to get over the possible stigma associated with a conviction, and thus, they may be permitted to withdraw the appeals.

3. Sri. Vipin Narayan, the learned Public Prosecutor, points out that there is no provision in the Code of Criminal Procedure, 1973 (hereinafter referred to as '*the Cr.P.C.*') or the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as '*the BNSS*') permitting withdrawal of an appeal by the appellant, except withdrawal by the Public Prosecutor under Section 321 Cr.P.C corresponding to Section 360 of the BNSS. He submits that there are several decisions of the Supreme Court which categorically state that once a criminal appeal is admitted, such an appeal has to be disposed of on its merits, after calling for the records. He refers to the decision of this Court in ***Samul Philipose v. Koshy Thomas, 2009 (4) KLT 360***, and the decision of the Madhya Pradesh High Court in ***State of M.P. v. Mooratsingh, 1975 KHC 1082***. However, he argues that the High Court may, in fit cases, permit withdrawal of an appeal under its inherent powers envisaged under Section 482 Cr.P.C



corresponding to section 528 of the BNSS to secure the ends of justice. He pointed out that since inherent jurisdiction under Section 482 Cr.P.C corresponding to section 528 of the BNSS can be exercised only by the High Court, such withdrawal may not be permissible in the case of an appeal pending before the Sessions Court. In essence, it is his submission that the inherent powers of the High Court under Section 482 Cr.P.C corresponding to Section 528 of the BNSS are independent and not circumscribed by Section 386 Cr.P.C corresponding to Section 427 of the BNSS. He pointed out that even after a sentence is served and fines are paid, an appeal may be pursued to remove the stigma of conviction or for other reliefs, and under Section 394 of the Cr.P.C. corresponding Section 435 of the BNSS, near relatives may decide to prosecute the appeal or accept the verdict after the death of the accused (in cases involving a sentence of fine).

4. Sri. S. Rajeev, who was appointed as *amicus curiae* to assist this Court, submitted that under Chapter XXIX of the Cr.P.C. corresponding to Chapter XXXI of the BNSS, provisions exist for the summary dismissal of appeals (S.384 of the Cr.P.C./S.425 of the BNSS). It is pointed out that the procedure for hearing appeals



(S.385 Cr.P.C./426 of the BNSS) and the powers of the appellate court (S.386 Cr.P.C. / S.427 BNSS) do not expressly provide for the withdrawal of an appeal. It is submitted that precedents indicate that once an appeal is admitted and not summarily dismissed, the appeal cannot be dismissed as infructuous or for non-prosecution, and the appellate court is bound to decide the appeal on its merits. He cites ***Balan v. State of Kerala; 1981 KLT 652***, where it was held that the Cr.P.C. does not permit dismissal of appeals as infructuous. He pointed out that in ***Bani Singh v. State of U.P., 1996 KHC 333***, the Supreme Court held that appeals cannot be dismissed for non-prosecution simpliciter; and in ***Samul Philipose (supra)*** and ***Muhammed Alias Kunhalan v. Sub-Inspector of Police, 2022 (6) KLT 308***, it was reiterated that once an appeal is filed, appeals must follow the procedure under Sections 384 to 386 of the Cr.P.C (corresponding to Sections 425 to 427 of the BNSS). He referred to the judgment of the Rajasthan High Court in ***Chhittar v. The State, 1957 CrLJ 155***, which held that once an appeal is admitted, it cannot be withdrawn. It is pointed out that none of the aforesaid judgments have considered the scope of the inherent jurisdiction of this Court, and in ***Keralakumaran v. State of***



Kerala, 1995 KHC 144, this Court recognised that the High Court may invoke inherent powers under S.482 Cr.P.C (corresponding to S.528 of the BNSS) to dismiss or restore an appeal in the interest of justice. Thus, according to him, while the statutory provisions do not contemplate withdrawal, the inherent powers of the High Court remain available to permit such withdrawal.

5. Having heard the learned counsel appearing for the appellants, the learned public prosecutor, and the learned *amicus curiae*, I am of the view that in appropriate cases this Court can permit the withdrawal of criminal appeals filed under the provisions of Chapter XXIX of the Cr.P.C corresponding to Chapter XXXI of the Sanhita. The reasons which compel me to hold so are detailed hereunder.

6. As already noticed, the provisions relating to an appeal under the provisions of the Cr.P.C are contained in Chapter XXIX of the Code, while the provisions relating to appeals under the provisions of the BNSS are contained in Chapter XXXI of the BNSS. The provisions are *in pari materia*.

7. **Balan** (*supra*) was a case where this court had *suo motu* exercised its revisional jurisdiction after finding that the Additional



Sessions Court had irregularly and wrongly dismissed a criminal appeal as infructuous, on the finding that the appellant/accused in that case had already served his sentence. This Court took the view that an appeal under the Cr.P.C could not be dismissed as infructuous on the ground that the appellant had already served the sentence and held that even where the sentence is served, the appellant/accused is entitled to seek that the stigma attached to a conviction could be wiped out by disposal of the appeal on merits. This position cannot be disputed. The Supreme Court in ***Gurjant Singh v. State of Punjab, 2021 KHC 7043*** held thus:-

*“5. Learned counsel for the appellant has contended, and rightly so, that an appeal against conviction could not have been treated as infructuous merely for the reason that the convicted appellant had served out the sentence awarded by the Trial Court. Learned counsel has further pointed out that the sentence awarded to the appellant was only of five months' imprisonment with fine of Rs.3,000/-; and even at the initial stage of appeal, it was specifically pointed out before the Court that the appellant had undergone the sentence of imprisonment and had deposited the fine imposed but, he was nevertheless seeking to assail his conviction. The relevant facts and submissions were distinctly noted by the High Court in the order dated 10.05.2017 that reads as under:-
"Learned counsel for the appellant submits that though the appellant has already undergone his entire sentence of 5 months and has also paid the fine imposed upon him, upon his conviction for the commission of an offence punishable under Section 18 of the NDPS Act, he would still like to*



*pursue the appeal on merits.
On his request, adjourned to 31.05.2017.
The records of the learned trial Court be summoned in the
meanwhile."*

6. Though learned counsel for the respondent has attempted to support the conviction and sentence of the appellant but could not dispute the position that merely for execution of the sentence, an appeal against conviction cannot be treated as infructuous. Moreover, the matter before the High Court was an appeal against conviction. Therein, if nobody was present for the appellant for any reason, the High Court could have taken appropriate steps for representation on behalf of the appellant but, in any case, the appeal could not have been dismissed as infructuous. So far as the contention on merits are concerned, in our view, the same ought to be urged before the High Court."

The High Court of Madhya Pradesh in ***Moorat Singh*** (*supra*) has taken the view that an appeal against acquittal cannot be withdrawn (by the prosecution), and once the appeal is admitted and not summarily dismissed, there is no specific provision in the Cr.P.C for permitting such withdrawal, and the provisions permitting withdrawal from a prosecution (by the State) do not apply at the appellate stage. This Court in ***Samul Philipose*** (*supra*) dealt with a situation where the appellate court had dismissed certain appeals challenging the conviction and sentence in a prosecution for the offence punishable under S.138 of the Negotiable Instruments Act, as



‘not pressed’. This Court took the view that where an appeal is duly lodged and not summarily dismissed, the appellate court cannot dismiss the appeal as ‘not pressed’. It was held that the Cr.P.C does not contemplate the dismissal of an appeal as withdrawn or as not pressed once it is duly lodged, and even where the counsel or party reports that he is not proceeding with the appeal which is duly lodged, the appellate court has to follow the procedure prescribed under Sections 384 or under Section 385 and 386 of the Cr.P.C and dispose of the appeal accordingly.

8. In ***Bani Singh*** (*supra*), the Supreme Court, while resolving the apparent conflict between the decisions in ***Shyam Deo Pandey v. State of Bihar, (1971) 1 SCC 855*** and ***Ram Naresh Yadav and Ors v. State of Bihar, AIR 1987 SC 1500***, held thus:-

“14. We have carefully considered the view expressed in the said two decisions of this Court and, we may state that the view taken in Shyam Deo case appears to be sound except for a minor clarification which we consider necessary to mention. The plain language of Section 385 makes it clear that if the appellate court does not consider the appeal fit for summary dismissal, it ‘must’ call for the record and Section 386 mandates that after the record is received, the appellate court may dispose of the appeal after hearing the accused or his counsel. Therefore, the plain language of



Sections 385-386 does not contemplate dismissal of the appeal for non-prosecution simpliciter. On the contrary, the Code envisages disposal of the appeal on merits after perusal and scrutiny of the record. The law clearly expects the appellate court to dispose of the appeal on merits, not merely by perusing the reasoning of the trial court in the judgment, but by cross-checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and findings recorded by the trial court are consistent with the material on record. The law, therefore, does not envisage the dismissal of the appeal for default or non-prosecution but only contemplates disposal on merits after perusal of the record. Therefore, with respect, we find it difficult to agree with the suggestion in Ram Naresh Yadav case that if the appellant or his pleader is not present, the proper course would be to dismiss an appeal for non-prosecution.”

Bani Singh (*supra*) is a case dealing with dismissal of an appeal for non-prosecution and the course to be adopted by the court when there is no appearance by the appellant/accused or his lawyer when the appeal is taken up for hearing.

9. In **Keralakumaran** (*supra*), this Court was considering the question as to whether an appeal or other criminal proceeding can be dismissed for default/non-prosecution. The decision was rendered on 02.03.1995 and before the judgment of the Supreme Court in



Bani Singh (*supra*). Therefore, the decision in **Keralakumaran** (*supra*) to the extent that it holds that a criminal proceeding (including an appeal) can be dismissed for default/ non-prosecution may not be good law.

10. In **K.S. Panduranga v. State of Karnataka, (2013) 3 SCC 721**, it was held:-

“19. From the aforesaid decision in Bani Singh, (1996) 4 SCC 720, the principles that can be culled out are:

19.1. That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;

19.3. That the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. That it can dispose of the appeal after perusing the record and judgment of the trial court;

19.5. That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation.”



In ***Surya Baksh Singh v. State of U.P., 2013 (4) KLT 493(SC)***, the Supreme Court considered the provisions in Chapter XXIX of the Cr.P.C. and took the view that except in certain situations (such as death sentence reference), the legislature has cast no duty on the appellate court to examine the correctness of a conviction and sentence unless the jurisdiction of the appellate court has been specifically invoked. The Supreme Court in ***Surya Baksh Singh (supra)*** also referred to with approval the observations of the Supreme Court in ***K.S. Panduranga (supra)***.

11. From an analysis of the relevant provisions contained in Chapter XXIX of the Cr.P.C and Chapter XXXI of the BNSS and the decisions referred to above, it is apparent that there are no provisions in the Cr.P.C or the BNSS which indicate that there shall be an appeal against conviction and sentence automatically and without the power of the appellate court being specifically invoked by the accused. Similarly, the right of appeal against acquittal under Section 378 of Cr.P.C and the corresponding Section 419 of the BNSS is also to be invoked and is not automatic. In other words, unless the power of the appellate court is invoked, there is no provision which enables the



appellate court to examine the correctness and legality of the conviction and sentence except in a situation where the High Court or the Court of Session were to invoke revisional powers *suo motu* or, for example, in the case of a death sentence which needs to be confirmed by the High Court under Section 366 Cr.P.C. No provision in Chapter XXIX of the Cr.P.C or Chapter XXXI of the BNSS permits the withdrawal of an appeal after it is lodged. A criminal appeal that is not summarily dismissed under Section 384 of the Cr.P.C/Section 425 of the BNSS can ordinarily be disposed of only on its merits, after calling for and perusing the records (except where the appeal is restricted to the question of sentence). Even where the appellant/accused has served the entire sentence and has also paid the fine/served the default sentence, the appeal also cannot be dismissed as 'infructuous' as the appellant/accused may opt to get over the stigma of conviction. When the counsel for the appellant or the appellant does not appear at the time the appeal is called for final hearing, the Court cannot dismiss the appeal for non-prosecution and must proceed to determine the appeal on merits by perusing the records (except where the appeal is restricted to the question of sentence) or after appointing an *amicus curiae* to assist the Court. It



is not mandatory that the Court should always appoint a counsel at state expense, and it may peruse the record on its own and decide the appeal.

12. However, as rightly pointed out by the learned Public Prosecutor and the learned *amicus curiae*, none of the aforesaid decisions have considered whether the power of the High Court under Section 482 of the Cr.P.C/528 of the BNSS can be invoked in appropriate cases to permit the withdrawal of an appeal. It is evident from a reading of the provisions of Section 482 Cr.P.C and Section 528 of the BNSS that no other provision in the Cr.P.C/BNSS shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This, coupled with the fact that the right of appeal under Chapter XXIX of the Cr.P.C corresponding to Chapter XXXI of the BNSS is not automatic and has to be invoked (subject to the exceptions noted above), compels me to hold that in cases like these where the appellants have served the entire sentence (of imprisonment), have already paid the entire fine and or served the default sentence, and are not interested in removing any stigma of



conviction, it would be a proper exercise of inherent jurisdiction vested in this Court under Section 482 of the Cr.P.C/528 of the BNSS to allow the appeal to be withdrawn. Since such inherent power is not available to Courts subordinate to the High Court, a request for withdrawal cannot be entertained by any appellate court subordinate to the High Court. The decisions in ***Balan*** (*supra*) and ***Samul Philipose*** (*supra*) were concerned with orders passed by appellate courts subordinate to the High Court. The decisions of the Supreme Court referred to above dealt with different fact situations that have been noticed, and those decisions do not in any manner indicate that the power under Section 482 Cr.P.C, corresponding to Section 528 of the BNSS is not available to be exercised while the High Court decides an appeal in terms of the provisions in Chapter XXIX of the Cr.P.C or Chapter XXXI of the BNSS.

In light of the aforementioned findings, the appeals are dismissed as withdrawn, invoking the inherent jurisdiction of this Court under Section 528 of the BNSS.

SD/-

**GOPINATH P.
JUDGE**

acd