

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

Cr1.MC.No. 123 of 2015

IN CC 669/2008 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II,
ERNAKULAM
CRIME NO. 246/1999 OF ERNAKULAM NORTH POLICE STATION , ERNAKULAM

PETITIONER:

DILEEP, AGED 37 YEARS,
S/O.GOPINATHAN, VAISAKH VEEDU,
PAZHAMTHOTTAM.

BY ADV. SRI.SHIBU VARGHESE

RESPONDENT:

STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
ERNAKULAM TOWN NORTH POLICE STATION,
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM, COCHIN - 31.

BY PUBLIC PROSECUTOR SMT.P.MAYA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 09-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 123 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A-1. CERTIFIED COPY OF THE JUDGMENT BY THE HONOURABLE
JUDICIAL FIRST CLASS MAGISTRATE COURT-II, ERNAKULAM IN
CC.NO.1161/2011 (CRIME NO.246/1999 OF ERNAKULAM TOWN NORTH POLICE
STATION) DATED 30.11.2006.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.123 of 2015

Dated this the 9th day of January, 2015

O R D E R

The petitioner herein is the second accused in a prosecution brought under Section 365 of the Indian Penal Code, and the case is now pending as C.C. No.669/2008 before the Judicial First Class Magistrate Court II, Ernakulam.

2. On the apprehension of arrest and remand to judicial custody in execution of a warrant of arrest issued from the trial court the petitioner seeks orders under Section 482 of the Code of Criminal Procedure, directing the learned Magistrate to recall the warrant of arrest and to consider his application for bail. Of course, the warrant of arrest issued by the court cannot be recalled by this Court now. The learned Magistrate who has issued warrant of arrest for proper reasons will have to consider the petitioner's request and pass appropriate orders. The petitioner can very well surrender before the learned Magistrate and make application for bail. Annexure A1 judgment in C.C No.1161/2001 shows that the first accused stands acquitted by the trial court. He obtained such

acquittal when the material witnesses turned hostile. This fact will have to be considered by the learned Magistrate when the petitioner makes application for bail afresh.

In the result, this Criminal Miscellaneous Case is closed with a direction to the court below that, application for bail, if filed by the petitioner on surrender in C.C No.669/2008, shall be judiciously considered, and appropriate decision as indicated above shall be taken, on the date of surrender itself.

**P.UBAID
JUDGE**

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