

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

Crl.MC.No. 132 of 2015 ()

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CC 639/2012 of JUDICIAL FRIST CLASS MAGISTRATE COURT,NILAMBUR
CRIME NO. 958/2011 OF NILAMBUR POLICE STATION , MALAPPURAM DISTRICT
=====**

PETITIONER/ACCUSED:-:

**KESAVANANDAN.P., S/O.PADAVETTI
SANKARAN NAIR (LATE), 'UDAYAM' HOUSE
PUNNAPPALA, WANDOOOR P.O., MALAPPURAM DISTRICT.**

BY ADV. SRI.SUNIL KUMAR A.G

RESPONDENTS/COMPLAINANT:-:

- 1. STATE OF KERALA
REPRESENTED BY SUB INSPECTOR OF POLICE
NILAMBUR THROUGH PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**
- 2. THE SUPERINTENDENT OF POST OFFICES,
DEPARTMENT OF POSTS, INDIA, MANJERI DIVISION
MANJERI, MALAPPURAM DISTRICT - 676 121.**
- 3. THE ASSISTANT SUPERINTENDENT OF POST OFFICES
OFFICE OF THE ASSISTANT SUPERINTENDENT OF POST OFFICE
DEPARTMENT OF POSTS, INDIA, MANJERI SUB DIVISION
MANJERI, MALAPPURAM DISTRICT - 676 121.**

***ADDL.R4 IMPEADED**

**ADDL.R4. THE CHIEF POST MASTER GENERAL
DEPARTMENT OF POST, KERALA CIRCLE
THIRUVANANTHAPURAM - 695033**

**IS IMPEADED AS ADDL.R4 AS PER ORDER DATED 25.02.2015 IN Crl.M.A.No.1452/2015
IN Crl.M.C.No.132/2015**

**R2 & 3,R4 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R1 BY PUBLIC PROSECUTOR SRI. JUSTIN JACOB**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27-11-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

**ANNEXURE A1: TRUE COPY OF THE F.I.R. IN CRIME No.958/2011 OF NILAMBUR
POLICE STATION**

**ANNEXURE A2: TRUE COPY OF THE FINAL REPORT IN CRIME No.958/2011 OF
NILAMBUR POLICE STATION**

ANNEXURE A3: TRUE COPY OF THE LETTER NO.F1/1/2009-10 DATED 26.12.2013.

ANNEXURE A4: TRUE COPY OF THE LETTER NO.F1/1/2009-10 DATED 04.07.2014.

ANNEXURE A5: COPY OF THE REPRESENTATION DATED NIL

ANNEXURE A6 COPY OF THE COMPLAINT DATED 24.12.2011

RESPONDENTS' EXHIBITS

**ANNEXURE R2(a) COPY OF MEMO NO.F1/1/2009-10 DATED 01.12.2010 ISSUED BY
DEPARTMENT PF POSTS, MANJERI DIVISION**

**ANNEXURE R2(b) COPY OF INQUIRY REPORT NO.Inq/01/2010-11 DATED
25.07.2011**

**ANNEXURE R2(c) COPY OF MEMO NO.F1/1/2009-10 DATED 31.08.2011 ISSUED BY
SUPERINDENT, DEPARTMENT OF POSTS, MANJERI DIVISION**

// TRUE COPY //

P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.132 of 2015

Dated this the 27th day of November, 2015

O R D E R

The petitioner herein seeks orders quashing a prosecution involving the offences under Sections 409 and 420 IPC. He is the sole accused in C.C.No.639/2012 of the Judicial First Class Magistrate Court, Nilambur. He seeks orders on the ground that the complaint in this case is very much delayed, and that he had already made payment of the amount allegedly misappropriated by him in breach of the trust before him as a public servant.

2. On hearing both sides, and on a perusal of the materials including the report submitted by the learned Magistrate, I find that the prosecution cannot be quashed under Section 482 Cr.P.C. Whether the complaint is delayed, or whether the final report is delayed, or whether there is any explanation for the delay, are matters to be looked into by the trial court. The fact that the petitioner subsequently remitted the amount will not absolve him from criminal liability, because once an offence is done, it cannot be condoned except by way of any defence

possible under the law. However, the fact that he has made full payment of the amount will be appropriately considered by the trial court at the appropriate stage. This Court cannot make any comments or directions on this aspect. The report of the learned Magistrate shows that trial has already commenced, and the court has already examined a witness. In such a situation, the petitioner will have to face trial, and present all his grievances before the trial court. It would be inappropriate or illegal to quash the prosecution at this stage.

In the result, this petition is disposed of, with a direction to the court below that all the grievances projected by the petitioner in his application shall be considered during the trial process.

Sd/-
P. UBAID, JUDGE

sd

// True Copy // P.A. to Judge