

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

Crl.MC.No. 689 of 2015 ()

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CC 2601/2010 of JUDICIAL FIRST CLASS MAGISTRATE COURT-V, ERNAKULAM
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PETITIONER/COMPLAINANT:

**SUNDIAL CHARTERED COURIER & LOGISTICS
GROUND FLOOR, MANNOOR ETTONNIL
ST.VINCENT ROAD, ERNAKULAM-18
REPRESENTED BY ITS MANAGING PARTNER MR.ANU S.**

BY ADV. SRI.P.SANJAY

RESPONDENTS:

- 1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM-682031**
- 2. JOSE MATHEW, JOEMIL BUNGALOW
PULICKAMALY P.O., MULANTHURUTHY
ERNAKULAM, PIN - 682 042.**
- 3. CLASSIC TELE SERVICES, JOEMIL BUNGALOW
PULICKAMALY P.O., MULANTHURUTHY
ERNAKULAM, PIN - 682 042, REPRESENTED BY ITS
MANAGING PARTNER**

**BY SMT.C.G.AJITHA
R1 BY PUBLIC PROSECUTOR SMT. P. MAYA**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20-03-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

ANNEXURE A1. TRUE COPY OF THE COMPLAINT DATED 02.03.09 IN M.P.NO.513/09.

**ANNEXURE A2. TRUE CERTIFIED COPY OF PROCEEDING SHEET IN C.C.NO.2601/10
OF JFCM-V, ERNAKULAM.**

**ANNEXURE A3. TRUE COPY OF THE DEPOSITION MADE OF PWD BEFORE THE JFCM-
V, ERNAKULAM.**

**ANNEXURE A4. TRUE COPY OF THE ADDITIONAL SECTION 313 STATEMENT IN
WRITING FILED BY THE ACCUSED NO.2 BEFORE THE JFCM-V,
ERNAKULAM.**

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY // P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.689 of 2015

Dated this the 20th day of March, 2015

O R D E R

The petitioner herein is the complainant in C.C.No.2601/2010 of the Judicial First Class Magistrate Court-V, Ernakulam. It is a prosecution brought under Section 138 of the Negotiable Instruments Act. When the case came up for final hearing, the learned Magistrate found the necessity of summons to the 2nd accused arraigned in the complaint. Accordingly, the learned Magistrate issued summons to the 2nd accused. The said order is under challenge in this proceeding. In fact the whole confusion was created by the complaint filed by the petitioner. The complainant probably preferred the complaint against two accused on a mistaken impression that Classic Tele Services is a partnership concern. The person who issued the cheque in question is the 1st accused, Jose Mathew, who is the 2nd respondent herein. The bank manager examined on the side of the complainant deposed before the trial court in clear terms that Classic Tele Services is only a proprietary concern, and that the account is being operated by Jose Mathew as the proprietor of the concern. Thus it stands cleared that Classic Tele Services is not a

partnership concern. It is only a proprietary concern. The proprietor is already on the party array as the 1st accused , and the person who actually issued the cheque is the proprietor. I find no reason or necessity to issue summons to the 2nd accused unnecessarily arraigned in the complaint. Accordingly, the summons issued by the learned Magistrate can be re-called. The case will have to proceed for final disposal accordingly.

In the result, this petition is allowed. The impugned order issuing summons to the 2nd accused shown in the complaint will stand set aside, and the summons will stand recalled. The trial court is hereby directed to dispose of the case according to law, without any delay.

Sd/-
P. UBAID, JUDGE

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