

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ALEXANDER THOMAS

TUESDAY, THE 16TH DAY OF JUNE 2015/26TH JYAISHTA, 1937

Crl.MC.No.951 of 2015

**CRIME NO.49/2011 OF KILIKOLLOOR POLICE STATION,CBCID,CRIME 14/CR/EOW-
1/KLM/11 KOLLAM.**

PETITIONER'S/ACCUSED NOS 1 & 2:

1. SHINE VIJAYAN,AGED 36 YEARS,
SON OF VIDHYADHARAN VIJAYAN,RESIDING AT
VIJITHA,K.C.13/643,KILIKOLLOOR P.O.,KOLLAM - 691 004.
2. BRINDA SHINE,AGED 36 YEARS,WIFE OF SHINE VIJAYAN,
RESIDING AT VIJITHA,K.C.13/643,
KILIKOLLOOR P.O.,KOLLAM - 691 004.

BY ADV.SRI.JOHNSON GOMEZ

RESPONDENT:

**THE STATE OF KERALA,
REPRESENTED THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM
THROUGH THE DEPUTY SUPERINTENDENT OF POLICE,
(EOW) CB CID,OFFICE OF THE SUPERINTENDENT OF POLICE,
CRIME BRANCH,ASRAMOM,KOLLAM DISTRICT.**

BY PUBLIC PROSECUTOR SMT.S.HYMA.

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 16-06-2015, ALONG WITH CRMC.5196/2014 AND CRMC.5642/2014, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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APPENDIX

PETITIONER'S ANNEXURES:

**ANNEXURE A1:A TRUE COPY OF THE FIR IN CRIME NO.49 OF 2011 OF
KILIKOLLOOR POLICE STATION.**

**ANNEXURE A2:A TRUE COPY OF THE REPORT NO.REF/GL/511/114 DATED 22ND
JANUARY 2011 ISSUED BY HLB HAMT, CHARTERED ACCOUNTS.**

**ANNEXURE A3:A TRUE COPY OF THE JUDGMENT DATED 6TH APRIL 2011 IN
CRMC NO.978 OF 2011 PASSED BY THIS HON'BLE COURT.**

**ANNEXURE A4:A TRUE COPY OF THE APPLICATION DATED 02/02/2015
SUBMITTED BY THE INVESTIGATION OFFICER AS CMP NO.1204
OF 2015 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE
COURT-I, KOLLAM.**

**ANNEXURE A5:A TRUE COPY OF THE ORDER DATED 3RD FEBRUARY 2015 IN
CRL.MP.NO.1204 OF 2014 IN CB CID CRIME 14/CR/EOW-
I/KLM/2011 (CRIME NO.49 OF 2011 OF KILIKOLLOOR POLICE
STATION).**

**ANNEXURE A6:A TRUE COPY OF THE TAX RECEIPT NO.1202770
DATED 28/04/2006 ISSUED BY THE VILLAGE OFFICER
VADAKKEVILA, KOLLAM.**

**ANNEXURE A7:A TRUE COPY OF THE TAX RECEIPT NO.1469889
DATED 13/07/2006 ISSUED BY THE VILLAGE OFFICER
VADAKKEVILA, KOLLAM.**

**ANNEXURE A8:A TRUE COPY OF THE SALE DEED NO.942 OF 2006
DATED 08/03/2006 OF ERAVIPURAM SUB REGISTRAR OFFICE.**

**ANNEXURE A9:A TRUE COPY OF THE SALE DEED NO.3825
DATED 8/03/2006 OF ERAVIPURAM SUB REGISTRAR OFFICE.**

**ANNEXURE A10:A TRUE COPY OF THE SALE DEED NO.3826 OF 2005
DATED 07/10.2005 OF ERAVIPURAM SUB REGISTRAR OFFICE.**

**ANNEXURE A11:A TRUE COPY OF THE LETTER DATED 30TH MAY 2001 ISSUED
BY THE PERSONNEL DEPARTMENT OF AL SAYESGH BROTHERS
COMPUTERS LLC.**

**ANNEXURE A12:A TRUE COPY OF THE LETTER DATED 27TH DECEMBER 2006
ISSUED BY THE ASST. HR AND ADMIN MANAGER OF AL
SAYESGH BROTHERS.**

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

ALEXANDER THOMAS, J.

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Dated this the 16th day of June, 2015.

ORDER

Sri.Johnson Gomez, learned counsel for the petitioners in the above cases, submits that the merits of the issues projected in the Crl.M.Cs does not survive for consideration in view of the subsequent development, except the legality and correctness of impugned Annexure-A5 order dated 3.2.2015 produced in Crl.M.C.No.951/2015. The said impugned Annexure-A5 order rendered on 3.2.2015 by the Judicial First Class Magistrate Court-I, Kollam in Crl.M.P.No.1204/2015 in CBCID, EOW-1 Crime No.14/CR/EOW-1/KLM/2011 reads as follows:

“This petition is filed under section 105(E) of Criminal Procedure Code for attaching the property belong to one Mr.Shine and his wife Brinda Shine who are the accused in crime No.CBCID, EOW-1 Crime No.14/CR/EOW-1/KLM 2011 (Kilikolloor Crime No.49/11).

It is alleged that these accused were conducting business at Abudabi, fell in debt of Ten Crores Rupees, absconded from there. Subsequently they were arrested from Air Port at New Delhi and produced before this court. At present they are in bail. While conducting business at Abudabi, 1st accused purchased 4.19 ares in Re.Sy.No.89/02, 0.81 ares in Re.Sy.No.89/03, 0.60 ares in

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Re.Sy.No.89/01 and 3.95 are in Re.Sy.No.90. Now he is trying to dispose these properties. Hence this petition is filed.

2. As per the agreement between government of The Republic of India and the Government of United Arab Emirates in mutual legal assistance and criminal matters, these two countries are contracting states. Therefore section 105(E) of Cr.P.C is applicable. Hence this petition is allowed. Petitioner can attach the properties belong to both these accused until further orders.”

The said order is passed under the enabling provisions conferred under Sec.105E of the Cr.P.C.

2. Sri.Johnson Gomez, learned counsel for the petitioners, made various submissions on the merits of the matter as regards the legality and correctness of the impugned order. Apart from that he further urge that though both the accused (2 petitioners in CrI.M.C.No.951/2015) were actually present in Kerala on the date on which Annexure-A5 was rendered. But, no notice or reasonable opportunity was offered to the accused by the learned Magistrate before passing the order by invoking the provisions under Sec.105E of the Cr.P.C.

3. Per contra, the learned Public Prosecutor also urged contentions in support of the impugned order and mainly relied on the

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decision of the Apex Court in the case State of Madhya Pradesh v. Balram Mihani and others reported in (2010) 2 SCC 602.

4. It is indisputable that though the names of the two petitioners have been shown as respondents 1 & 2 in the impugned Annexure-A5 proceeding, no reasonable opportunity appears to have been granted to the petitioners before passing the impugned order by the learned Magistrate. Without going into the merits of the matter in any manner, it is ordered in the interest of justice that in order to strictly ensure fairness and principles of natural justice that impugned Annexure-A5 order is set aside and Crl.M.P.No.1204/2015 referred to therein stands remitted back to the Judicial First Class Magistrate Court-I, Kollam. The learned Magistrate will consider the matter afresh and decide the matter in accordance with law after granting opportunity of personal hearing to the prosecution as well as to the petitioners, who are the accused in the above said crime. The petitioners will appear before the court below on 1.7.2015, through their counsel, after giving advance notice of the same to the learned Assistant Public Prosecutor concerned who is appearing before the court below. Thereupon the learned Magistrate shall fix the date of hearing in the matter and

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intimate the same to the petitioners. Petitioners will be at liberty to present arguments through their counsel. Orders on CrI.M.P.No.1204/2015 shall be passed by the learned Magistrate within a period of six weeks from the date of appearance of the parties as directed above, viz., 1.7.2015. It is further ordered to protect the interest of justice that though the impugned Annexure-A5 is technically set aside, this Court in exercise of extra ordinary inherent power under Sec.482 Cr.P.C would order that there shall be an order of conditional attachment of the properties covered by the impugned Annexure-A5 until the petitioners show proper cause to the learned Magistrate on the matters raised in Annexure-A5 and until the learned Magistrate passes orders on CrI.M.P.No.1204/2015 as directed above. Sri.Johnson Gomez, learned counsel for the petitioners, also undertake that the petitioners will not take any steps whatsoever to dispose or alienate any of the property covered by Annexure-A5. It is further made clear that this Court has intervened with the impugned order solely for effectuating principles of natural justice and this order shall not in any way amount to expression of any opinion on the merits of the matter. The whole issues are at large before the learned Magistrate and decision thereon is

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solely within the province of the learned Magistrate as directed above.
Sri.Johnson Gomez, learned counsel for the petitioners, submits that no
other directions are required in these CrI.M.Cs.

With these observations and directions the CrI.M.Cs stand finally
disposed of.

ALEXANDER THOMAS,
Judge.

bkn/-