

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

Crl.MC.No. 412 of 2013 ()

**S.C.NO.117/2000 of ASSISTANT SESSIONS COURT, PAYYANNUR
CRIME NO.109/1998 OF THALIPARAMBA POLICE STATION, KANNUR**

PETITIONER(S)/2ND ACCUSED:

**JAMAL. P,
PULLIYIL HOUSE,
KUPPAM, THALIPARAMBA, KANNUR DISTRICT**

**BY ADVS.SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH**

RESPONDENT(S)/COMPLAINANT:

- 1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR OF THE HIGH
COURT OF KERALA, ERNAKULAM 682 031**
- 2. STATION HOUSE OFFICER
THALIPARAMBA POLICE STATION
THALIPARAMBA THALUK, KANNUR DISTRICT
KANNUR, PIN 670141**
- 3. PARAKANDY PRAKASAN,
KUNHIRAMAN, THALIPARAMBA AMSOM,
KUPPAM DESAM,
THALIPARAMBA THALUK, KANNUR DISTRICT - 670 141**

**R1 & R2 BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN.
R3 BY ADV. SRI.P.NARAYANAN**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 25-02-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER(S) EXHIBITS

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| ANNEXURE A1 | THE TRUE COPY OF THE FIR NO 109/1998 DATED 2/3/1998 OF THE THALIPARAMBA POLICE STATION |
| ANNEXURE A2 | THE TRUE COPY OF THE FINAL REPORT DATED NIL IN S.C-117/2000 ON THE FILE OF SUBORDINATE & ASST. SESSION'S JUDGE PAYYANNUR 1 |
| ANNEXURE A3 | THE TRUE COPY OF THE LETTER DATED 5/6/2002 ISSUED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT |

RESPONDENTS' EXHIBITS

NIL

//True Copy//

P.A. To Judge

Bb

K. Ramakrishnan, J.

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Crl.M.C.No.412 of 2013

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Dated this, the 25th day of February, 2015.

O R D E R

This is an application filed by the petitioner who is the second accused in Crime No.109/1998 of Taliparamba police station to quash the proceedings on the basis of the permission granted by the Government to withdraw the case S.C.No.117/2000 of the Assistant Sessions Court, Payyannur as against the other accused persons under Section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that petitioner was arrayed as second accused in Crime No.109/1998 of Taliparamba police station and after investigation, final report was filed and since the present petitioner was absconding, case against the other accused persons who appeared was committed to the Sessions Court and it was taken on file as S.C.No.117/2000 on the file of Sessions Court, Thalassery and thereafter, it was made over to Assistant Sessions Court, Payyannur for disposal. While that case was pending, the Government decided to withdraw that case and on the basis of

the permission granted, the case was withdrawn under Section 321 of Code of Criminal Procedure. Since the present petitioner did not appear, the case against him was split up and transferred to register of long pending cases and that is pending as L.P.C.No.57/2001 and non bailable warrant is pending against him. According to him, he is entitled to get that benefit. So, he filed the application seeking the following relief:

"i) To quash Annexure A2 Final report dated nil in S.C.-117/2000 on the file of the Subordinate & Asst.Session's Judge Payyannur

ii) Issue any other order or direction, which this Honourable Court may deem fit and proper from time to time for the Petitioner to attain the ends of justice."

3. Heard the Counsel for the petitioner and the Public Prosecutor.

4. The Counsel for the petitioner submitted that since the case has been withdrawn and the other accused persons were discharged, he is also entitled to get that benefit and he prays for allowing the application.

5. The application was opposed by the Public Prosecutor.

6. It is an admitted fact that the petitioner was arrayed as second accused in Crime No.109/1998 of Taliparamba police station alleging offences under Sections 143, 147, 148, 324, 307 read with Section 149 of Indian Penal Code against fourteen accused persons including the second accused and after investigation, final report was filed and it was taken on file as C.P.No.30/1999 on the file of the Judicial First Class Magistrate Court, Taliparamba and accused Nos. 1, 5, 6 to 14 appeared and their case was committed to the Sessions Court, Thalassery where it was taken on file as S.C.No.117/2000 and thereafter, it was made over to Assistant Sessions Court, Payyannur for disposal. The case against accused Nos. 2, 3, 4 was split up and refiled as C.P.No.03/2000. Thereafter, it appears that the case against them was transferred to register of long pending cases as their presence could not be procured and it is pending as L.P.C.No.57/2001 before the Judicial First Class Magistrate Court, Taliparamba. It is true that as per order dated 22.10.2003, the Assistant Sessions Judge had allowed the application for permission to withdraw that case and accused persons who appeared were discharged under Section 321(b)

of the Code of Criminal Procedure. But, when the petition was admitted, this court has directed the petitioner to surrender before the court below and move for bail and if such an application is filed, the magistrate was directed to release him on bail considering the fact that there is a possibility of settlement and the case against other persons were withdrawn. But, it is seen from the letter dated 20.02.2015 that the order of this court has not been complied with. Counsel for the petitioner also submitted that he did not comply with the order as he is working abroad. Since the petitioner is an absconding accused and he had not complied with the direction given by this court to surrender and enlarge on bail, this court feels that it is not a fit case to invoke the power under Section 482 of Code of Criminal Procedure to quash the proceedings without getting his presence. Further, the Government has granted permission to withdraw the case against persons appearing and the permission was granted to withdraw the Sessions Case S.C.No.117/2000 of Assistant Sessions Court, Payyannur. So, without getting the presence and getting further order of permission to withdraw the case, this court feels that, that benefit cannot be granted to the

petitioner. So, the petitioner is not entitled to get the discretionary relief claimed in the petition under Section 482 of Code of Criminal Procedure in view of the fact that he has not complied with the direction given by this court and the application is liable to be dismissed.

So, the petition is dismissed.

Sd/-
K.Ramakrishnan, Judge.

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[True copy]

P.A to Judge