

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

Crl.MC.No. 1524 of 2015 ()

IN ST 103/2013 of J.M.F.C.-I,KOYILANDY

PETITIONER(S)/ACCUSED:

**HAMSA AGED 56 YEARS
S/O.LATE HUSSAINAR, MOYIKKAL HOUSE, P.O.PARIYAPURAM
OLAPEEDIKA, THANOOR, TIRUR P.O.
PIN - 673 302.**

BY ADV. SMT.P.KPRIYA

RESPONDENT(S)/COMPLAINANT:

- 1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA.**
- 2. HEMARAJ P P, AGED 54 YEARS
S/O.NARAYANAN NAIR, AISWARYA, HOUSE NO. 38/673
MELEDATHPARAMB, P.O.EDAKKAD, WEST HILL
KOZHIKODE - 673 005.**

R BY PUBLIC PROSECUTOR SMT. S. HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13-03-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 1524 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A1: THE TRUE COPY OF THE COMPLAINT FILED BY THE 2ND RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, KOYILANDY.

ANNEXURE A2: TRUE COPY OF THE APPLICATION FILED BY THE COUNSEL FOR THE PETITIONER BEFORE THE COURT TO CONDONE THE ABSENCE OF THE ACCUSED.

ANNEXURE A3: TRUE COPY OF THE A' DIARY PROCEEDINGS IN TYPEWRITTEN FORM.

ANNEXURE A4: TRUE COPY OF THE PRESCRIPTION ISSUED BY THE DOCTOR TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No. 1524 of 2015

Dated this the 13th day of March, 2015.

O R D E R

The petitioner herein is the accused in a prosecution under Section 138 of the Negotiable Instruments Act before the Judicial First Class Magistrate Court-I, Koyilandy. When he was arrested and produced before the learned Magistrate on 26.1.2015, he was granted bail by the learned Magistrate, on a condition that he shall personally appear on all posting dates. Unfortunately, he could not make appearance on a particular day. The learned counsel for him submitted an application to excuse the absence, but it was rejected, and the learned Magistrate cancelled the bail and proceeded against the sureties. The petitioner now apprehends that if he again surrenders before the learned Magistrate, he will be remanded to judicial custody. I do not think that he will be mechanically remanded, when the offence is bailable. It is not known why the learned Magistrate made a direction at the first instance that the accused shall make appearance personally on all posting dates. On many occasions this court has made it clear

that personal appearance of the accused shall not always be insisted in prosecution under Section 138 of the Negotiable Instruments Act, and that the court shall not make a mechanical approach to such matters. The bail bond having been cancelled, the accused will have to make application for bail afresh. The learned Magistrate will think whether the proceedings against the sureties should continue. Anyway, I feel that the earlier order directing personal appearance on all posting dates need not be enforced. The learned Magistrate will have to make a rethinking on a practical approach, and pass appropriate orders, when the petitioner surrenders again and make application for bail.

With these observations, this Crl.M.C is closed.

P.UBAID,
JUDGE

sab