

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

CrI.MC.No. 1878 of 2015 ()

L.P.C.NO. 22/2010 of CHIEF JUDICIAL MAGISTRATE COURT, KASARAGOD

PETITIONER(S)/ACCUSED:

**JAYASRI,
AGED 43 YEARS,
W/O.LATE SHIVADAS, RESIDING AT KALYANAPURAM MADAM,
ALAMPADI, KASARAGOD.**

**BY ADVS.SMT.K.DEEPA (PAYYANUR)
SRI.V.R.NASAR**

RESPONDENT(S)/COMPLAINANT & STATE:

**STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031**

BY PUBLIC PROSECUTOR SMT.SAREENA. P.GEORGE.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23-03-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 1878 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE I: TRUE COPY OF THE COMPLAINT OF L.P.C.NO. 22/2010.
ANNEXURE II: TRUE COPY OF THE COMPLAINT OF L.P.C.NO. 59/2010.

RESPONDENT(S)' EXHIBITS

NIL

//True Copy//

P.A. To Judge

Bb

K. Ramakrishnan, J.

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Crl.M.C.No.1878 of 2015

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Dated this, the 23rd day of March, 2015.

ORDER

This is an application filed by the accused in L.P.C.No.22/2010 on the file of Chief Judicial Magistrate Court, Kasaragod seeking certain directions to be issued under Section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that petitioner is arrayed as accused in a private complaint filed by the complainant alleging offence under Section 138 of the Negotiable Instruments Act and according to the petitioner, she did not receive any summons. The court has transferred the case to register of long pending cases and now pending as L.P.C.No.22/2010 before the Chief Judicial Magistrate Court, Kasaragod. The complainant had filed another complaint in respect of the same incident alleging offence under Sections 417 and 420 of Indian Penal Code and the same was also transferred to register of long pending cases and it is pending as L.P.No.59/2010 before the same court. She is not residing in the address shown in the complaint. She

apprehends that if she surrenders, she will be sent to jail and without direction from the court, the lower court will not consider the bail application. So, the petitioner has no other remedy except to approach this court seeking the following relief:

"To issue direction to the learned Chief Judicial Magistrate, Kasaragod to release the petitioner on bail on the same day of her surrender in L.P.C.No.22/2010 of the Court of Chief Judicial Magistrate, Kasaragod."

3. Considering the nature of relief claimed in the petition, this court felt that the petition can be disposed of at the admission stage itself after hearing the Counsel for the petitioner and the Public Prosecutor.

4. The Counsel for the petitioner submitted that she is a widow and no summons was served on her and if she surrenders, she is likely to be remanded without considering the bail application. Unless a direction is given, court below will not consider the bail application on the date of surrender.

5. The application was opposed by the Public Prosecutor.

6. It is seen from the allegations in the petition itself that the above case was originated on the basis of a private complaint

filed by the complainant alleging offence under Section 138 of the Negotiable Instruments Act and now pending as L.P.C.No.22/2010 on the file of the Chief Judicial Magistrate Court, Kasaragod. However, I am not at this stage going into the question as to whether she has been served with summons etc., She can very well surrender before the concerned magistrate court and move for recalling the warrant and release her on bail stating the reason for her non appearance. Further, being an offence under Section 138 of the Negotiable instruments act, it is a bailable offence as well. No direction can be given to the court below to grant bail as claimed in the petition. The apprehension of the petitioner that if she surrenders, she will be remanded without considering her bail application is without any basis as this court has observed in several petitions of this nature that if the accused surrenders before the court below and move for recalling the warrant and release him on bail, the presiding officers of the criminal courts are expected to consider and dispose of the bail application on the date of surrender itself as far as possible and as such, in fact, no direction need be given in this regard. But, however, considering the apprehension

raised in the petition, this court feels that the petition can be disposed of as follows:

If the petitioner surrenders before the Chief Judicial Magistrate Court, Kasaragod and moves for recalling the warrant and release her on bail in L.P.C.No.22/2010 pending before that court, the learned magistrate is directed to consider and dispose of the bail application on the date of filing of the application itself after hearing the Counsel for the complainant in the case as well in accordance with law.

With the above direction and observation, the petition is disposed of.

Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.Ramakrishnan, Judge.

Bb

[True copy]

P.A to Judge