

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

Crl.MC.No.1915 of 2015 ()

**IN CC 44/2008 of C.J.M.C,KOZHIKODE
CRIME NO. 337/1990 OF CBCID, THIRUVANANTHAPURAM**

PETITIONER(S)/ACCUSED :

**SAINUDHEEN @ SAINUDHEENKUNHU,
SAROJINI BHAVAN, TC 49/251, KALIPPANKULAM WARD
KMALESWARAM, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.M.RAJAGOPALAN NAIR
SRI.G.BIJU**

RESPONDENT(S)/COMPLAINANT & STATE :

- 1. DETECTIVE INSPECTOR
CBCID, KOZHIKODE 673 001.**
- 2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, PIN: 682 031.**

BY PUBLIC PROSECUTOR SMT.S.HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
22-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VS

Crl.MC.No.1915 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

- A1:** CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.337/CR/90
REGISTERED BY THE ADDITIONAL DETECTIVE INSPECTOR, CBCID
HEAD QUARTERS, THIRUVANANTHAPURAM
- A2:** TRUE COPY OF THE JUDGMENT IN CC NO.135/2004 DATED 14/10/2005
OF THE CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE
- A3:** TRUE COPY OF THE JUDGMENT IN CC NO.135/2004 DATED 17/10/2005
OF THE CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE
- A4:** TRUE COPY OF THE ORDER DATED 10/6/2010 ACCEPTING THE
COMPROMISE IN CC NO.45/2008 OF THE CHIEF JUDICIAL MAGISTRATE
COURT, KOZHIKODE.
- A5:** CERTIFIED COPY OF THE DEPOSITION OF PROSECUTION WITNESS
NO.1 EXAMINED IN CC NO.44/2008.
- A5(A):** CERTIFIED COPY OF THE DEPOSITION OF PROSECUTION WITNESS
NO.2 EXAMINED IN CC NO.44/2008.
- A5(B):** CERTIFIED COPY OF THE DEPOSITION OF PROSECUTION WITNESS
NO.3 EXAMINED IN CC NO.44/2008.

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

PA TO JUDGE

VS

ALEXANDER THOMAS, J

Crl.M.C.No.1915 of 2015

Dated this the 22nd day of May, 2015

ORDER

This Criminal M.C. has been instituted under Section 482 of the Code of Criminal Procedure seeking the invocation of the inherent powers conferred on this Court with the following prayer.

“This Hon'ble Court may be pleased to quash all further proceedings in C.C.No.44/2008, pursuant to Annexure-A1 Final Report, on the file of the Chief Judicial Magistrate Court, Kozhikode.”

2. This court as per order dated 24.3.2015 had call for a report from the trial court concerned regarding the present stage of C.C.No.44/2008 and also regarding the reasonable time required for disposal of the said case.

3. Now it is reported by the Chief Judicial Magistrate Court, Kozhikode, that the case was initially numbered as C.C.No.44/2008 and was made over to Judicial First Class Magistrate Court-I, Kozhikode under Section 410 of Cr.P.C and the same was re-filed as C.C.No.548/2005 on the file of the Judicial First Class

Magistrate Court-I, Kozhikode. The Judicial First Class Magistrate Court-I, Kozhikode has furnished a separate report dated 17.4.2015, stating that the aforementioned C.C.No.44/2008 on the file of the Chief Judicial Magistrate Court, Kozhikode had been made over to the latter Court and that case records received in the said Court on 26.2.2015, and the case was taken on file as C.C.No.548/2015 for offences registered under Section 420 read with 34 IPC and posted to 6.5.2015 for appearance of the accused. Further it is stated that 40 witnesses are to be examined for the prosecution. Out of this, 9 witnesses were examined (PW1 to PW9) by the Chief Judicial Magistrate's Court and 3 witnesses are no more. Considering the fact that there are 28 witnesses to be examined, at least one year time required for the disposal of this case.

4. The learned counsel for the petitioner submits that the crime in this case is in the year 1990 and that of the final report was submitted as early as 1994 and that the matter was settled with two among the three

complainants and that the whereabouts of one of the three complainants are not known, presumably as he may be out of the State for his employment and though the main offence is only under Section 420 of Cr.P.C which is compoundable, for the said proceedings the settlements could not be legally given effect in view of the non availability of that person. Moreover, it is stated that 3 witnesses have already been examined and the petitioner is made to face the ordeal of the impugned criminal proceedings for the last more than 25 years and though the trial had earlier started before the Chief Judicial Magistrate Court, and the same was not completed. Therefore, it is urged by the petitioner that in the interest of justice, this Court may issue appropriate directions to ensure that the case is disposed of without any further delay by the court below concerned.

5. Mr.G.Biju, the learned counsel for the petitioner submits that the petitioner is also trying to finalise the settlement either by trying to trace out the whereabouts of one of the complainants who is not in

station or on the basis of the settlement with two other persons who have already given evidence before the court below fully in favour of the petitioner and that liberty may also be reserved to the petitioner to approach this Court for quashment of the impugned rule proceedings on the ground of settlement as the main offence is only under Section 420 IPC, which is compoundable as per the provisions of the Code of Criminal Procedure.

6. Taking into consideration, the aforementioned aspects of the case, as well as the report of the court below concerned, it is ordered in the interest of justice that the Judicial First Class Magistrate Court-I, Kozhikode will take all necessary reasonable endeavours to ensure that as far as possible the case is finally disposed of without much further delay at least within the time frame of 6 months suggested by the court below. However, it is made clear that this order will not in any preclude the petitioner from seeking other appropriate remedies, including the plea for quashment on the ground

of settlement or such other tenable grounds.

With these observations and directions, this
Crl.M.C. stands finally disposed of.

Sd/-
ALEXANDER THOMAS
JUDGE

VS