

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 24TH DAY OF APRIL 2015/4TH VAISAKHA, 1937

Crl.MC.No. 2097 of 2015 (G)

**AGAINST THE JUDGMENT IN C.C 113/2012 of JUDICIAL FIRST CLASS MAGISTRATE -
II, PERUMBAVOOR DATED 28-11-2011**

PETITIONER:

**SIDDIQUE V.I, AGED 42 YEARS S/O. IBRAHIM,
VALLOOR VEEDU, COLONYPPADI,
ERUMATHALA POST, ALUVA. (ACCUSED).**

**BY ADVS.SRI.R.ROHITH
SRI.SAYED MURTHALA THANGAL**

RESPONDENT:

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

R BY PUBLIC PROSECUTOR SMT. M.T. SHEEBA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
24-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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Crl.MC.No. 2097 of 2015 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNEXURE A1 : A COPY OF THE JUDGMENT DTD. 28.11.2012 IN C.C 113/12 OF
JUDICIAL FIRST CLASS MAGISTRATE COURT-II, PERUMBAVOOR.**

**ANNEXURE A2 : A COPY OF THE MEMORANDUM OF CRIMINAL APPEAL NO. 30/2013
DTD. 17.01.2013 PREFERRED BY THE PETITIONER BEFORE THE
DISTRICT AND SESSION JUDGE, ERNAKULAM.**

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

P.A. TO JUDGE

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K.RAMAKRISHNAN, J

Crl.M.C.No.2097 of 2015

Dated this the 24th day of April 2015

ORDER

This is an application filed by the petitioner to quash the order issuing non-bailable warrant against the petitioner by Judicial First Class Magistrate's Court-II, Perumbavoor in C.C. No.113 of 2012, under Section 482 of Code of Criminal Procedure. (hereinafter called 'the Code').

2. It is alleged in the petition that the petitioner is an accused in C.C. No.113 of 2012 on the files of Judicial First Class Magistrate's Court-II, Perumbavoor, which was taken on file on the basis of a private complaint filed by the complainant alleging offence under Section 138 of Negotiable Instruments Act. After trial, it ended in conviction and he filed Crl.Appeal No.30 of 2013

before the Sessions Court, Ernakulam. Later it was transferred to Additional Sessions Court, Muvattupuzha for disposal. He has not received any information and no notice has been received by the petitioner so far. It is now understood that non bailable warrant has been issued by the Magistrate against the petitioner and that is pending. So the petitioner has no other remedy except to approach this court seeking the following relief:

(i) Stop all the execution proceedings in C.C. No.113/2012 of the honourable Judicial First Class Magistrate's Court-II, Perumbavoor and call for the records which leads to Annexure A1.

3. On the basis of the allegations in the petition, this court has called for a report from the Judicial First Class Magistrate's Court-II, Perumbavoor on this aspect. The learned Magistrate has sent a report, which reads as follows:

“May I humbly submit the following for kind consideration and favourable orders.

The complaint was originally filed before the Judicial First

Class Magistrate's Court-1, Perumbavoor as C.C.No.223/2010 on 26.3.2010. Subsequently the case was transferred to this court by Hon'ble CJM and renumbered as C.C.113/2012 on 13.3.2012. The case was disposed on 28.11.2012 by this court. Accused was found guilty under section 138 of NI Act, convicted and sentenced to undergo simple imprisonment for three months and to pay a compensation of Rs.4,00,000/- (four lakhs only) with interest @9% per annum, that would come to Rs.1,05,000/- to the complainant u/s.357/- Cr.P.C. In default of payment of compensation accused was further sentenced to undergo simple imprisonment for one month. Since, the accused was absent on 28.11.2012, he was directed to appear before the Court on 28.12.2012 for receiving the sentence.

While so, accused filed Crl.A. 30/2013 before the Additional District and Sessions Court, Muvattupuzha and the appeal was disposed on 25.7.2014. Judgment in Crl.A.30/13 dated 25.7.2014 was received before this Court on 22.11.2014. Vide that order appeal was allowed in part and accused was sentenced to undergo simple imprisonment for a day till the rising of Court and to pay a compensation of Rs.4,00,000/- u/s. 357(3) Cr.P.C. In default of payment of compensation, simple imprisonment for 3 months. Accused was directed to appear before this Court within 45 days from the date of appellate judgment. But accused failed to appear before this Court as directed by Hon'ble appellate court and hence, non bailable warrant and distress warrant were issued against the accused. Case stands posted to 19.5.2015.”

4. When the application came up this court for hearing today, the learned counsel for the petitioner submitted that he has already filed a copy application for getting certified copy of the order and he wants to file a revision and since he was not aware of the disposal of the appeal, he could not take further steps in this regard. So he wants a breathing time of two weeks for filing a revision and getting appropriate orders from the revisional court.

5. The application is opposed by the learned Public Prosecutor.

6. Considering nature of reliefs claimed by the petitioner, this court felt that this application can be disposed of hearing the learned counsel for the petitioner and the learned Public Prosecutor and considering the report of the learned Magistrate.

7. On going through the report of the Judicial First Class Magistrate's Court -II, Perumbavoor, it is seen that the Additional Sessions Court, Muvattupuzha had disposed of the appeal

confirming the order of conviction passed by the Judicial First Class Magistrate's Court -II, Perumbavoor in C.C. No.113 of 2012, but modified the sentence by allowing the appeal in part sentencing the petitioner to undergo imprisonment till rising of the court and to pay a compensation of Rs.4,00,000/- to the complainant in default to undergo simple imprisonment for 3 months, under Section 357(3) of the Code, as per order dated 25.7.2014 and 45 days time from the date of order of appellate court was granted to comply with the directions. The order was received by the Magistrate on 22.11.2014. Since the petitioner did not appear as directed, a non bailable warrant as well as distress warrants have been issued and now the case is posted to 19.5.2015. On going through the report, it is seen that there is no illegality committed by the court below as the petitioner did not appear as directed by the appellate court to receive the sentence. But however, considering the pitiable condition of the petitioner that he could not file the revision, since he did not get the information regarding

the disposal of the case from his counsel, this court feels that some time can be granted to the petitioner to file the revision. So, two weeks' time from today is granted to the petitioner to file revision and to get necessary interim orders from the revisional court. Till then the coercive steps initiated by the Judicial First Class Magistrate's Court-II, Perumbavoor is directed to be kept in abeyance. If no interim order has been produced by the petitioner within that time, the court below is at liberty to proceed with the coercive steps already initiated against the petitioner.

With the above observations and directions, this Crl.M.C. is disposed of. The office is directed to communicate this order to the concerned court immediately.

Sd/-

**K.RAMAKRISHNAN, J,
JUDGE**

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