

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

Cr1.MC.No. 2347 of 2015

IN C.C NO.772/2014 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
PAYYANNUR

CRIME NO. 94/2006 OF PAYYANNUR POLICE STATION, KANNUR

PETITIONER:

K. NOUJESH, AGED 33 YEARS,
S/O.AMBUKUNHI, GANDHI NAGAR COLONY,
PAYYANNUR AMSOM, KAVVAI DESOM,
KANNUR DISTRICT.

BY ADV. SRI.M.V.AMARESAN

RESPONDENT:

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

BY SR. PUBLIC PROSECUTOR SMT.SAREENA GEORGE.P

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 09-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE 1: COPY OF THE COMMON ORDER IN C.M.P NO.1552/2015, 1553/2015 AND 1554/2015 IN C.C NO.772/2014 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, PAYYANNUR DATED 26.3.2015

ANNEXURE 2: COPY OF THE PETITION IN C.M.P NO.1552/2015 FILED BY THE PETITIONER BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE, PAYYANUR DATED 27.2.2015

ANNEXURE 2(A): COPY OF THE COUNTER AFFIDAVIT DATED 19.3.2015 IN C.M.P NO.1552/2015 FILED BY THE RESPONDENT.

ANNEXURE 3: COPY OF THE PETITION IN C.M.P NO.1553/2015 FILED BY THE PETITIONER BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, PAYYANUR DATED 27.2.2015

ANNEXURE 3(A): COPY OF THE COUNTER AFFIDAVIT DATED 19.3.2015 IN C.M.P NO.1553/2015 FILED BY THE RESPONDENT.

ANNEXURE 4: COPY OF THE PETITION IN C.M.P NO.1554/2015 FILED BY THE PETITIONER BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE, PAYYANUR DATED 27.2.2015.

ANNEXURE 4(A): COPY OF THE COUNTER AFFIDAVIT DATED 19.3.2015 IN C.M.P NO.1554/2015 FILED BY THE RESPONDENT.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

ab

P.UBAID, J.

Crl.M.C No.2347 of 2015

Dated this the 9th day of April, 2015

O R D E R

The petitioner herein is the sole accused in C.C. No.772/2014 of the Judicial First Class Magistrate Court, Payyannur. Pending the proceeding he made three applications before the learned Magistrate; one is for exemption from personal appearance, the other for permission to go abroad and the third one to release his passport. The learned Magistrate passed a common order on 26.3.2015, dismissing the three applications. The said common order is under challenge in this Crl.M.C. The petitioner relies on **Asok Kumar v. State of Kerala (2009(2) KLT 712).**

2. On hearing both sides, and on perusal of the impugned order I find that dismissal of the petitioner's applications cannot be justified. There is reason to believe that the court below is in fact a heavy court, and there is no possibility of the case being taken up for trial in the near future. The learned Magistrate will re-think, and he will have to reconsider the application. If the offence is not very serious and

if there is no possibility of the case being taken up for trial in the near future, the petitioner's request can be allowed, on appropriate conditions. If the petitioner is a person employed abroad, and if he wants to go abroad to join his employment, his request must be considered as genuine.

In the result, this Criminal Miscellaneous Case is allowed. The impugned order passed by the court below in C.M.P Nos.1552/2015, 1553/2015 and 1554/2015 is set aside and the applications are revived. The learned Magistrate will reconsider the matter and decide the petitions afresh. If there is no possibility of the case coming up for trial as observed by this Court in **Asok Kumar v. State of Kerala** the request of the petitioner can be allowed reasonably on appropriate reasonable conditions.

**P.UBAID
JUDGE**

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