

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ALEXANDER THOMAS

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

Crl.MC.No.2960 of 2015

**LP NO.77/2010 (CMP NO.679/2015) of JUDICIAL FIRST CLASS MAGISTRATE -I,
KANJIRAPPALLY.**

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PETITIONER/ACCUSED:

**SUNU PHILIP, AGED 41 YEARS,
S/O.P.P.PHILIP, PAIKAYIL HOUSE,
KANJIRAPPALLY, KOTTAYAM DISTRICT - 686 512.**

BY ADV.SRI.MATHEW KURIAKOSE

RESPONDENTS/COMPLAINANT & STATE:

- 1. SHIBU PETER, S/O.V.J.PETER, VETTUKALLEL HOUSE,
EDANADU KARAYIL, VALLICHIRA VILLAGE,
MEENACHIL TALUK, KOTTAYAM DISTRICT - 686 574.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

R2 BY PUBLIC PROSECUTOR SMT.S.HYMA.

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 22-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

pk

CrI.MC.No.2960 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEXURE A: CERTIFIED COPY OF THE COMPLAINT WHICH IS NOW PENDING
AS L.P.NO.77/2010 ON THE FILES OF JUDICIAL FIRST CLASS
MAGISTRATE COURT-I, KANJIRAPPALLY.**

**ANNEXURE B: CERTIFIED COPY OF THE APPLICATION DATED 30.01.2015 IN
L.P.NO.77/2010 ON THE FILES OF JUDICIAL FIRST CLASS
MAGISTRATE COURT-I, KANJIRAPPALLY.**

**ANNEXURE C: CERTIFIED COPY OF THE ORDER DATED 16.02.2015 IN
L.P.NO.77/2010 ON THE FILES OF JUDICIAL FIRST CLASS
MAGISTRATE COURT-I, KANJIRAPPALLY.**

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

ALEXANDER THOMAS, J.

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Crl.M.C No.2960 of 2015

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Dated this the 22nd day of June, 2015

ORDER

The prayer in this Crl.M.C is as follows:

It is most humbly prayed that, this Hon'ble Court may be pleased to call for the records leading to Annexure C order, set aside the said order dated 16.02.2015 and direct the learned Magistrate to return Annexure A complaint to the complainant, by allowing this Criminal Miscellaneous Case.

2. In the impugned Anx.C order, it is stated by the learned Magistrate that the application in C.M.P No.679 of 2015 stands dismissed as not pressed. The petitioner has urged the following amended pleas which reads as follows:

“(i) Incorporate the following sentences at the end of paragraph 5 in the statement of facts in page 2 of the Memorandum of Criminal Miscellaneous Case:

“Annexure C order is to the effect that Annexure B application is dismissed as not pressed. In this context it is submitted that neither the petitioner nor his counsel did make any submission or endorsement to not press Annexure B application. In fact the petitioner's counsel insisted for allowing the application. However in Annexure C order it is wrongly mentioned that the application was not pressed.”

(ii) Incorporate the following sentence as Ground J in page 4 of the Memorandum of Criminal Miscellaneous Case:

“Neither the petitioner nor his counsel did make any submission or endorsement to not press Annexure B application. However in Annexure C order it is wrongly mentioned that the application was not pressed.”

(iii) Incorporate the following sentence as the last point in the Synopsis in page A of the Memorandum of Criminal Miscellaneous Case:

"In Annexure C order it is wrongly mentioned that the application was not pressed."

2. It is further submitted by the learned counsel for the petitioner that the cheque in question was drawn from the account of the accused with Bangalore, Elahanga branch of the Corporation Bank and therefore the Judicial first Class Magistrate Court –I, Kanjirappally is not having territorial jurisdiction to entertain the complaint, in view of the decision of the Supreme Court reported in 2014 9 SCC 129.

2. Though notice has been served to the first respondent complainant, he has not appeared before this Court. Taking into account, the totality of the facts and circumstances of this case, it is ordered in the interest of justice that the impugned Annexure C order will stand set aside. Accordingly, C.M.P No.679 of 2015 will stand remitted back to the Judicial First Class Magistrate Court–I, Kanjirappally who shall consider the matter afresh and pass orders thereon after hearing the complainant and the accused within a period of 10 days from the date of receipt of the certified copy of

this order, in the light of the legal principles laid down by the Apex Court in the decision reported in 2014 9 SCC 129.

With these observations, the Crl.M.C stands finally disposed of.

sd/-

sab

ALEXANDER THOMAS, JUDGE