

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 15TH DAY OF JUNE 2015/25TH JYAISHTA, 1937

Crl.MC.No. 2983 of 2015 ()

(LP.NO. 7/2006 OF CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR)

PETITIONER/ACCUSED:

**K.K.SURENDRAN,
PROPRIETOR, M/S. SUBHALAKSHMI BRICKS, KADAPPAKKUDY,
WEST KALLADA, RESIDING AT: RAJESH BHAVAN, VALIYAPADAM,
VILANTHARA P.O., WEST KALLADA, KOLLAM DISTRICT.**

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENT(S)/COMPLAINANT AND STATE:

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**
- 2. EMPLOYEES STATE INSURANCE CORPORATION,
REPRESENTED BY THE INSPECTOR, E.S.I CORPORATION,
THRISSUR. PIN-686 001**

**R1 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE
R2 BY ADV. SRI.SANDESH RAJA**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 15-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

sts

CRMC.NO.2983/2015

APPENDIX

PETITIONER'S ANNEXURES:

- ANNEX A1** **COPY OF THE CHELAN REMITTANCE OF RS.70,000/- TOWARDS
EMPLOYEES CONTRIBUTION REMITTED TO THE BANK.**
- ANNEX A2** **COPY OF THE COMPLAINT IN C.C.NO.181/2002 PRESENTLY PENDING
AS L.P.NO.7/2006 BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT,
THRISSUR.**

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

ALEXANDER THOMAS, J.

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Crl.M.C No.2983 of 2015

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Dated this the 15th day of June, 2015

O R D E R

The petitioner is the sole accused in Calender case, C.C No.181 of 2002 (now pending as L.P No.7 of 2006) on the file of the Chief judicial Magistrate Court, Thrissur. The case arises out of a complaint instituted by the second respondent, Employees State Insurance Corporation (ESI Corporation) on the allegation that the petitioner failed to remit the contributions of the workers for the period from 1.2.1997 to 30.9.1997 to the ESI Corporation and that he has committed the above said offences. The main allegation is that the petitioner committed default in payment of contribution of the employees concerned. But as per Annexure A1, the petitioner has remitted the entire amount with damages covered by Annexure A2 complaint. Hence it is contended that further prosecution proceedings for non-payment of contribution to the Insurance Corporation is illegal and unjust. According to the petitioner, he sold the industrial unit concerned to another person as early as in

the year 1999 and since the contribution defaulted by the petitioner has already been remitted in continuance of the impugned Annexure A2 complaint before the Court of Chief Judicial Magistrate (CJM), Thrissur is liable to be interdicted by this Court.

2. When the above matter came up for consideration, on 8.6.2015, Sri. Sandesh Raja, learned counsel appearing for the 2nd respondent, ESI Corporation submits on instructions that though the petitioner has paid the amount of Rs.70,000/- as shown in Annexure A1, he has not paid the requisite penalty amount of Rs.21,103/- in this case. Accordingly, the petitioner had undertaken to pay the said penalty amount of Rs.21,103/- on or before 12.6.2105 and that he would produce the requisite receipt in this regard before this Court. In compliance of the said undertaking, the petitioner's counsel has produced a chelan receipt dated 11.6.2015 seen to have been issued by the State Bank of Travancore, NRI Branch, Kollam showing payment by the petitioner of an amount of Rs.21,103/- to the ESI Corporation and the petitioner's counsel has also produced the photocopy of the signed and sealed acknowledgment receipt by the Deputy Director of ESI Corporation, Kollam.

3. Sri. Sandesh Raja, learned counsel for the 2nd respondent submits that the punishment as Section 85 (a) of the E.S.I. Act, 1948 is that if any person fails to pay any contribution which under this Act he is liable to pay, when he shall be punishable (i) where he commits an offence under clause (a), with imprisonment for a term which may extend to three years, but (b) which shall not be less than six months, in any other case and shall also be liable to fine of five thousand rupees: Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term. It is brought to the notice by the petitioner and it is not seriously disputed by the learned Standing Counsel for the ESI Corporation that in cases like this where the entire amount and damages has been paid along with the penalty amount in that regard, the Magistrate Court concerned normally imposes only an imprisonment till rising of the court and a fine of up to Rs.5,000/-.

4. It is not seriously disputed that the petitioner has sold the industrial unit as early as in the year 1999 and the veracity of his averment that he has already paid the amount of Rs.70,000/- as stated above is also not disputed. Now the petitioner has also paid

the penalty amount of Rs.21,103/-. In this circumstances, in exercise of the powers conferred on this Court under Section 482 of Code of Criminal Procedure, it is ordered in the interest of justice that in this case also the learned Magistrate may limit the punishment by directing the petitioner to present in the court till the rising of the court and to pay a fine amount up to Rs. 5,000/-. This course of action is fairly accepted by the learned Standing Counsel for the 2nd respondent, ESI Corporation.

5. Accordingly, it is ordered that the impugned warrant proceedings pending against the petitioner on account of the inclusion of the case in long pending cases will stand under suspension. The petitioner will appear before the court below concerned within a period of 3 weeks from today after giving advance notice to the official concerned of the ESI Corporation at least 48 hours prior to such proposed appearance. On the appearance of the petitioner as directed above, the Magistrate may take up the case and on the petitioner pleading guilty, the punishment may be restricted in the manner suggested earlier herein above. If the petitioner appears and there is compliance with the terms and directions of this order, the impugned warrant would

also stand recalled on the day of his appearance. It is further made clear that in case the petitioner does not voluntarily appear before the court below concerned within the aforementioned period of three weeks from today, then the directions issued herein above will stand automatically vacated.

With these observations and directions, the Crl.MC stand finally disposed of.

sd/-

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ALEXANDER THOMAS, JUDGE