

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ALEXANDER THOMAS

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

Crl.MC.No.3038 of 2015

**CMP NO.525/2015 of JUDICIAL FIRST CLASS MAGISTRATE COURT,PIRAVOM.
C.C.NO.937/2014 of JUDICIAL FIRST CLASS MAGISTRATE COURT,PIRAVOM.
CRIME NO.398/2010 PIRAVAM POLICE STATION , ERNAKULAM**

PETITIONER/ACCUSED:

**SREEDHARAN,S/O.KUTTAPPAN,AGED 60 YEARS,
PALLIPURATH HOUSE,PAZHOOR KARA,
PIRAVOM VILLAGE,ERNAKULAM DISTRICT.**

BY ADV.SRI.GEORGIE SIMON

RESPONDENT/STATE COMPLAINANT:

**STATE OF KERALA,REPRESENTED BY ITS
PUBLIC PROSECUTOR,HIGH COUJRT OF KERALA,
ERNAKULAM-31.**

BY PUBLIC PROSECUTOR SMT.S.HYMA.

**THIS CRIMINAL MISC.CASE HAVING COME UP FOR ADMISSION
ON 05-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

pk

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APPENDIX

PETITIONER'S ANNEXURES:

**ANNEXURE A1: CERTIFIED COPY OF ORDER PRONOUNCED BY HON'BLE BY
J.F.C. M. PIRACVOM IN C.M.P.NO.525/2015 23/03/2015.**

**ANNEXURE A2: CERTIFIED COPY OF THE DISCHARGE CARD ISSUED IN FAVOUR
OF PETITIONER BY MEDICAL COLLEGE KOPTTAYAM
DATED 23/09/2013.**

**ANNEXURE A3: CERTIFIED COPY OF THE MEMO PROVING THE
ACKNOWLEDGMENT OF A.P.P RECEIVED THE COPY OF
PETITION FILED U/S 205 CR.P.C BY THE COUNSEL FOR
PETITIONER DATED 10/03/2015.**

**ANNEXURE A4: CERTIFIED COPY OF AFFIDAVIT CUM PETITION U/S 205 OF
C.R.P.C FILED BY THE COUNSEL FOR THE ACCUSED/
PETITIONER BEFORE HON'BLE J.F.C.M COURT, PIRAVOM
DATED 10/03/2015.**

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

ALEXANDER THOMAS, J.

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Dated this the 5th day of June, 2015.

ORDER

The order under challenge is Annexure-A1 order rendered on 23.3.2015 in Crl.M.P.No.525/2015 in Crime No.398/2010 of Piravom Police Station whereby the application filed by the petitioner for exemption under Sec.205 Cr.P.C has been rejected on the ground that the petitioner had not served copy of the said application to the learned Prosecutor concerned. On this ground the court below held that the petitioner's counsel is not interested in prosecuting the matter and accordingly, the Crl.M.P was dismissed as per the impugned order. The matter arise out of C.C.No.937/2014 on the file of the Judicial First Class Magistrate Court, Piravom which is in relation to Crime No.398/2010 of Piravom Police Station registered for offences under Secs.447 and 324 IPC.

2. It is averred by the petitioner's counsel that due to his unavoidable busy schedules at the District Court, Ernakulam and the Munsiff Court on the same day he could not attend the court and that

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the lawyer concerned waited before the court below till 4:00 p.m. and when he moved outside to attend a call and the case was called and on seeing that non issuance of the copy of the exemption petition to the Assistant Public Prosecutor, the case was dismissed, etc. It is further stated that as a matter of fact on the same day in question viz., 10.3.2015, copy of the exemption petition was served to the Assistant Public Prosecutor one Smt.Sreeja, Advocate and that copy was received by her etc.

3. Without going into the correctness of these averments it is to be appreciated that the impugned rejection order is solely on the ground that there was no effective or proper representation for the petitioner on the day in question. The averment of the petitioner that his Advocate concerned who was engaged by him had some inconvenience on that day need not be disbelieved by this Court. Therefore, this Court is of the considered opinion that the court below is bound to consider the application and take a decision thereon, on merits. In this view of the matter the impugned order is set aside and Crl.M.P.No.525/2015 in C.C.No.937/2014 is remitted back to the Judicial First Class Magistrate Court, Piravom, for a decision afresh in

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accordance with law after hearing the both parties. Orders in this regard shall be passed by the learned Magistrate within two weeks from the date of receipt of a copy of this order. Even if the petitioner has already served copy of the application to the Assistant Public Prosecutor, it is ordered in the interest of justice that the petitioner shall cause to serve a copy of the said application to the Assistant Public Prosecutor well in advance so that the controversy of this nature is not repeated. Needless to say, reasonable opportunity of being heard to both parties should be granted to both sides by the Magistrate.

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

ALEXANDER THOMAS,
Judge.

bkn/-