

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. 3068 of 2015 ()

(CC.NO. 785/2012 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -II, ALUVA)

PETITIONER/ACCUSED :

**JOSEPH JACOB,
S/O. JACOB KURIANU, AGED 39 YEARS,
PEEDIKAKKAL SERVICE CENTRAL
NEAR EDAPPALLY POST OFFICE,
ERNAKULAM DT.**

**BY ADVS.SRI.JACOB CHACKO
SRI.MATHEWS JOSEPH**

RESPONDENT(S)/STATE/COMPLAINANT :

**1. THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM- 682 031.**

**2. M.A. VASU,
MANGALATHU HOUSE, THAIKATTUKARA P.O.,
ALUVA, ERNAKULAM - 683 106.**

**R1 BY PUBLIC PROSECUTOR SMT. S.HYMA
R2 BY ADV. SRI.JAISON JOSEPH**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 22-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

sts

CRM.C.NO.3068/2015

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEX A1 COPY OF THE DEPOSITION OF THE COMPLAINANT AND ITS CROSS
EXAMINATION DATED 25/03/2014 IN THE C.C.785/2012 OF JUDICIAL
FIRST CLASS MAGISTRATE -II, ALUVA**

**ANNEX A2 COPY OF THE ORDER DATED 07/04/2015 IN M.P.830/2015 IN
C.C.785/2012 OF JUDICIAL FIRST CLASS MAGISTRATE -II, ALUVA.**

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

ALEXANDER THOMAS, J.

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Crl.M.C.No.3068 of 2015

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Dated this the 22nd day of June, 2015

O R D E R

The order under challenge is the impugned Annexure A2 order dated 07/04/2015 rendered on M.P.No.830/2015 in C.C.No.785/2012 of the Judicial First Class Magistrate Court-II, Aluva. The Calender case is in respect of a private criminal complaint instituted by 2nd respondent herein alleging that the petitioner herein (accused) has committed the offence under Section 138 of the Negotiable Instruments Act for the alleged dishonour of cheque for an amount of Rs.2 Lakhs. The impugned order of Annexure A2 reads as follows:

“ This is a petition under S.311 Cr.P.C. recall and re examine the Complainant who was examined as PW1. The petitioner is the accused in the above case. The Complainant was already examined and cross examined in detail once and the prosecution evidence is already closed, the accused was examined under S.313 Cr.P.C, and it was submitted that there was no defence evidence. Accordingly the case was posted for hearing and orders. This Petition was filed subsequently to reopen the evidence.

The petition does not clearly specify the reason why the petitioner seeks to recall and re examine PW1, the complainant . In this case it was represented on

09.01.2015, that there is no defence evidence. When the petitioner seeks to recall and re examine the complainant who was already examined once, in such a circumstance he has to explain what purpose will be served by such a re call. As this petition does not explain the same, this petition is dismissed.”

2. Heard both sides. The learned counsel for the petitioner submits that it is true that the petitioner's application did not disclose all the material particulars regarding the reason for re-opening the evidence and that he was permitted as last chance to file a fresh application in that regard with all material particulars and that the present impugned application numbered as M.P.No.830/2015 may be dismissed as withdrawn and consequently Annexure A2 impugned order may be set aside by this Court and the matter may be remitted back to the Jurisdictional Magistrate Court concerned to enable the petitioner to file a fresh appropriate application in that regard for the consideration of the Magistrate. In the light of these submissions and in the interest of justice it is ordered that M.P.No.830/2015 filed before the Jurisdictional Magistrate shall stand dismissed as withdrawn. Accordingly, the impugned Annexure A2 order dated 07/04/2015 passed by the Magistrate shall stand set aside. The matter will stand remitted back to the Jurisdictional Magistrate. The petitioner will file proper

application within five days from the date of issuance of certified copy of this order. On receipt of the said application, the Jurisdictional Magistrate concerned will consider the matter afresh and pass orders thereon after hearing the accused and the complainant within a period of ten days from the date of production of certified copy of this order. It is pointed out from both sides that the next posting date before the court below is 08/07/2015. Subject to the above directions, the court below will re schedule the next posting date. But the time limit mentioned herein above will be complied with all the parties concerned so as not to cause any further delay in the trial process, before the court below.

3. At this juncture learned counsel for the 2nd respondent insisted that cost should be awarded and that this Court should direct the petitioner to pay a cost amount of Rs.2000/- to him for his lack of due negligence in not properly prosecuting the Miscellaneous Petition which is now stands dismissed as withdrawn. In view of this submission it is ordered that the petitioner shall pay cost of Rs.2000/- to the respondent and produce receipt before the Jurisdictional Magistrate and it is only on showing the proper receipt for payment of this cost amount that the Magistrate need to

entertain the application as aforestated. In case the petitioner does not pay the cost within a period of ten days from the date of issuance of certified copy of this order, then the directions given herein above will stand automatically vacated.

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

Sd/- ALEXANDER THOMAS, JUDGE

MJL

