

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

Crl.MC.No. 3072 of 2015 ()

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CMP. NO.3906/2014 IN ST. NO.2823/2006-LP. NO.82/2009 OF JUDICIAL FIRST
CLASS MAGISTRATE COURT-I, KOTTAYAM.**

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PETITIONER/ACCUSED:

**JOSY JOSEPH, S/O JOSEPH, AGED 48 YEARS,
NADUVILAPARAMBIL, THURUTHY P.O.,
CHANGANACHERRY, KOTTAYAM DISTRICT.**

BY ADV. SRI.JOHN VARGHESE.

RESPONDENTS/STATE AND COMPLAINANT:

- 1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.**
- 2. JACOB KURUVILA,
VELADITHARA HOUSE, THURUTHY P.O.,
CHANGANACHERRY-686 535.**

R1 BY PUBLIC PROSECUTOR SMT.S. HYMA.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 24-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- ANNEXURE A1:** TRUE COPY OF THE LETTER DATED 18.08.2014 ISSUED BY THE TAHSILDAR, CHANGANACHERRY TO THE PETITIONER.
- ANNEXURE A2:** TRUE COPY OF THE C.M.P.NO.3906/2014 IN S.T.NO.2823/2006 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, KOTTAYAM DATED 25.10.2014.
- ANNEXURE A3:** CERTIFIED COPY OF THE ORDER DATED 15.12.2014 IN C.M.P.NO.3906/2014 IN S.T.NO.2823 /2006 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, KOTTAYAM.

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

ALEXANDER THOMAS, J.

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Crl.M.C.No. 3072 of 2015

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Dated this the 24th day of June, 2015

ORDER

The order impugned in this Crl.M.C. is rendered on 15.12.2014 on Criminal Miscellaneous Petition No.3906/2014 in S.T.No.2823/2006 on the file of the Judicial First Class Magistrate's Court-I, Kottayam. The petitioner was an accused in S.T.No.2823/2006 on the file of the above said Magistrate's court for offence under Sec.138 of the Negotiable Instruments Act. According to the petitioner, the case was settled in between the defacto complainant and the petitioner accused on 18.6.2013 and the application to withdraw S.T.No.2823/2006 submitted to the learned Magistrate, was allowed and the learned Magistrate was pleased to withdraw the warrant issued against the petitioner. Now, recently, when the petitioner had gone to the Village Office concerned for remitting his property tax, he was informed that a distress warrant has been issued in respect of the property of the petitioner by the Judicial First Class Magistrate's Court-I, Kottayam and the said order is not

withdrawn. Accordingly, the petitioner filed a petition before the Tahsildar, Changanacherry, on 19.7.2014, who, as per Anx.A-1 letter dated 18.8.2014 replied that a distress warrant is pending and that no orders have been received from the learned Magistrate withdrawing the case. Thereafter the petitioner approached the Judicial First Class Magistrate's Court-I, Kottayam, by filing Anx.A-2 application dated 25.10.2014 (Criminal Miscellaneous Petition No. 3906/2014 in S.T.No.2823/2006) under Sec.85 of the Code of Criminal Procedure, praying to set aside the distress warrant issued on 25.10.2014. But the learned Magistrate as per the impugned Anx.A-3 order dated 15.12.2014 has closed the said petition on the ground that since re-file number is not specified, the case records cannot be traced out. Since the distress warrant is pending, the petitioner is not permitted to remit property tax or even to take a loan. Hence for quashing the impugned Anx.A-3 order and for appropriate direction to the court below to reconsider Anx.A-2 application on merits, the petitioner has filed the above captioned Crl.M.C.

2. Heard Sri.John Varghese, learned counsel for the petitioner and the learned Public Prosecutor appearing for the

respondent State of Kerala.

3. In compliance with the direction issued by this Court calling for report from the said Magistrate concerned, the said Magistrate has now furnished a report dated 22.6.2015 to the Registry of this Court, the relevant part of which, reads as follows:

“2. The records of L.P.No.82/09 (S.T.2823/06) were traced out from the record room of this court. On going through the order sheet of the said case, it is found that the said case was refiled as S.T.2356/09 on 26.5.09 and the accused was acquitted u/s 257 of the Cr.P.C. because the complainant had filed an application to withdraw the complaint and the same was allowed. Thus, the proceedings in the said case was culminated on the said day and warrant ordered against the accused was recalled. The case of the petitioner in Crl.M.C.No.3072/15 that the complainant was withdrawn on 18.6.13 is not correct. The said case was withdrawn on 26.5.09. Since the grievance of the petitioner is that the proceedings initiated against his properties are not dropped, on 22.6.15, a communication was given to the Tahasildar, Changanassery and Village Officer, Vazhappally West ordering to recall the said proceedings.”

In the light of the aforestated report dated 22.6.2015 submitted by the learned Magistrate, the impugned Anx.A-3 order stands set aside and it is ordered that as the complaint in question was withdrawn on 26.5.2009 and as due intimation has now been given by the jurisdictional Magistrate, to the Tahsildar, Changanacherry, and the Village Officer, Vazhappally West, ordering to recall the said proceedings, the impugned distress warrant proceedings mentioned in the impugned proceedings will also stand set aside

and rescinded.

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

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge