

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

Crl.MC.No. 3188 of 2015

**S.T.NO.106/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
MAVELIKKARA**

PETITIONER(S)/ACCUSED :

**ATHULYA, AGED 24 YEARS,
D/O.ASOKAN, RESIDING AT RESIDING AT 'SADARAM',
KAITHA NORTH, CHETTIKULANGARA P.O., MAVELIKKARA, PIN- 690 106.**

BY ADV. SRI.N.K.MOHANLAL

RESPONDENT(S)/COMPLAINANT NO.1:

- 1. SUMESH KUMAR T.U.,
THOPPIL HOUSE, EROOR NORTH P.O.,
THRIPUNITHURA-682 306.**
- 2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**

BY PUBLIC PROSECUTOR SMT.S.HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 02-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

ANNEXURE-A1: A TRUE COPY OF PROCEEDINGS OF THE COURT BELOW.

**ANNEXURE-A2: A TRUE COPY OF ATTENDANCE CERTIFICATE
REF NO.SSAPL/OPS-EL/2015-02 DATED 25.05.2015.**

**ANNEXURE-A3: A TRUE COPY OF COMPLAINT FILED BEFORE
THE POSTMASTER OF MAVELIKKARA.**

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

ALEXANDER THOMAS, J.

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Crl.M.C.No. 3188 of 2015

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Dated this the 2nd day of June, 2015

ORDER

The prayer in the above captioned Crl.M.C. is as follows:

“.... direct the Hon'ble Judicial First Class Magistrate Court, Mavelikkara to receive and dispose of exemption petition that may be filed by counsel of petitioner under Section 205 Cr.P.C. in ST 106/2015 pending before it on the same day of filing it in accordance with law.”

2. It is averred that the petitioner is accused in Summary Trial Case, S.T.No.106/2015 on the file of the Judicial First Class Magistrate's Court, Mavelikkara, for offense punishable under Sec.138 of the Negotiable Instruments Act for the alleged dishonour of cheque for an amount of Rs.3 lakhs. That summons was not duly served on the petitioner, but that non-bailable warrant was issued and the case was posted to 5.6.2015. That it is learnt that summons issued in the residential address of the petitioner was served by the postman with the endorsement as “unclaimed” and it is only in these circumstances that warrant was issued by the court below on 5.5.2015. That the petitioner is employed in a private airways company at Mumbai as Technical Officer from 1.6.2014 and has

been residing there since then and that for the last three months she has not availed leave for her service, etc. That her parents, who are residing in her residential address, have also not received any intimation regarding service of any such summons. That a complaint was given to the Postmaster of Mavelikkara regarding the wrong endorsement on the cover containing service of summons as “unclaimed”, etc., which is pending enquiry. It is in the light of these facts and circumstances projected in the CrI.M.C., that the petitioner prays for direction to the Magistrate's Court concerned to receive and dispose of the exemption application that may be filed by the petitioner under Sec.205 of the Cr.P.C. in S.T.No.106/2015 pending before it on the same day of filing, in accordance with law. The learned counsel for the petitioner has also relied on the decision of this Court in Rohit S. Ved v. State of Kerala, reported in 2008 (4) KLT 671.

3. Heard Sri.N.K.Mohanlal, learned counsel appearing for the petitioner and the learned Public Prosecutor appearing for the respondent State.

4. In the facts and circumstances of this case, taking note of the fact that the petitioner–accused is a lady, who is working in

Mumbai, it is ordered as follows:-

- (i) In case the petitioner voluntarily surrenders before the jurisdictional Magistrate concerned within six weeks from today, and submits necessary application for grant of bail, then the jurisdictional Magistrate concerned shall consider such application for bail on the same day itself and grant bail subject to the terms and conditions that may be imposed in such cases. Until the learned Magistrate passes orders on the application for grant of bail as directed above, further coercive proceedings that may be pending against the petitioner pertaining to this case, will be kept in abeyance. If the petitioner does not voluntarily surrender before the jurisdictional Magistrate as directed above, within the aforementioned period of six weeks from today, then the benefit of the directions hereinabove in this case will stand automatically vacated.
- (ii) It is open to the petitioner, through her counsel, to file appropriate application for exemption along with the aforementioned application for grant of bail as directed above. After the learned Magistrate passes orders on the grant of bail to the petitioner as directed above, the learned Magistrate shall take it for consideration the aforementioned application for exemption and pass appropriate orders thereon. It would be open to the petitioner's counsel to rely on such reported decisions of this Court on those aspects of the matter that may be urged on behalf of the petitioner in that behalf and it is for the learned Magistrate concerned to consider the applicability of such court rulings.

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

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge