

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 11TH DAY OF JUNE 2015/21ST JYAISHTA, 1937

CrI.MC.No. 3403 of 2015 ()

**(AGAINST THE ORDER IN CRL.R.P.NO. 8/2013 OF 1 ADDL.SESIONS COURT,
THRISSUR DATED 16-03-2015)**

**(CRL.M.P.NO.7863/2012 IN CC.NO. 474/2011 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT - I,CHALAKUDY)**

PETITIONER/REVISION PETITIONER/ACCUSED:

**MARY DAS, AGED 49 YEARS,S/O.PAUL,
PULIKOTTIL HOUSE, PURANATTUKARA,
THRISSUR DISTRICT.**

**BY ADVS.SRI.N.M.MADHU
SRI.P.P.HARRIS
SMT.C.S.RAJANI**

RESPONDENT/RESPONDENT/COMPLAINANT:

**THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**

BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 11-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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APPENDIX

ANNEX A- A TRUE COPY OF THE APPLICATION FILED BY THE ASSISTANT PUBLIC PROSECUTOR, BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT AS CRIMINAL M.P.NO.7863/2012 IN C.C.NO.474/2011.

**ANNEX-B CERTIFIED COPY OF THE ORDER DATED 06.09.2012 IN CRIMINAL
M.P.NO.7863/2012 IN C.C.NO.474/2011**

**ANNEX-C CERTIFIED COPY OF THE ORDER DATED 16.03.2015 IN
CRL.R.P.NO.8/2013 ON THE FILES OF THE 1ST ADDITIONAL SESSIONS
COURT,THRISSUR.**

NIL

/TRUE COPY/

P.A.TO JUDGE

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ALEXANDER THOMAS, J.

Crl.M.C.No.3403 Of 2015

Dated this the 11th day of June, 2015.

ORDER

The orders under challenge in this Crl.M.C are the impugned Annexure-B order dated 6.9.2012 passed by the Judicial First Class Magistrate Court, Chalakkudy as well as Annexure-C revisional order dated 16.3.2015 passed by the I Additional Sessions Court, Thrissur. Annexure-B is the order rejecting the plea made by the prosecutor concerned seeking permission to withdraw the impugned criminal proceedings in C.C.No.474/2011 in which the petitioner herein is an accused for offence punishable under Secs.279, 337 & 338 of IPC. The impugned Annexure-B order reads as follows:

“CW1 present. Filed objection. Heard. Permission to withdraw from prosecution not granted. Hence petition dismissed.”

2. Aggrieved by this order, the petitioner has filed Criminal Revision Petition invoking the revisional remedy which culminated in Annexure-C order.

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3. Heard Sri.N.M.Madhu, learned counsel for the petitioner and the learned Public Prosecutor.

4. Annexure-B indisputably is a non speaking order. Though Annexure-C is a detailed order, paragraph 9 of the Annexure-C order would make it clear that even the revisional court was not satisfied in coming to a conclusion that the learned Magistrate has passed Annexure-B order herein without speaking any reasons and that the Magistrate is expected to say reasons for arriving at a conclusion or for not granting permission to withdraw the prosecution case etc. When the basic order is a non-speaking order, it would have been prudent that the revisional court dealt with that issue alone instead of going into the merits of the matter. Once the Government grants necessary no objection to the prosecutor and the prosecutor concerned makes an application for withdrawal of the impugned prosecution, then it is for the trial court which has to bestow its focus and consideration to the plea made therein. When the court at the first instance has not given proper reasons for passing the impugned rejection order, the better and proper course of action would be to remit the matter back to the Magistrate Court for consideration afresh that the issues are considered with open mind and he can apply his mind for reasons arriving at the

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decision so, that there is no room for complaint whatsoever regarding the decision making process. In this view of the matter, the impugned Annexures-B & C orders are set aside. The matter is remitted back to the Judicial First Class Magistrate Court, Chalakudy for consideration afresh and take a decision thereon after reasonable opportunity to both sides. It is made clear that this Court has not considered or expressed any opinion in the merits of the matter relating to impugned Annexures B & C orders. It is solely within the province of the court below to take a decision in accordance with law.

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

ALEXANDER THOMAS,
Judge.

bkn/-