

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

Crl.MC.No. 3412 of 2015

SC 584/2014 OF ADDITIONAL ASSISTANT SESSIONS COURT, NORTH PARAVUR

PETITIONER(S)/ACCUSED NO.6:

**DILEEP, AGED 26 YEARS,
S/O.DIVAKARAN, PARIYARATHU HOUSE, EZHIKKARA PO,
NORTH PARAVUR.**

**BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY**

RESPONDENT(S)/COMPLAINANT/STATE:

**STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM 682031,
(CRIME NO.537/2012 OF NORTH PARAVUR POLICE STATION,
ERNAKULAM DISTRICT).**

BY PUBLIC PROSECUTOR SMT.S. HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 18-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

ALEXANDER THOMAS, J.

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Crl.M.C No.3412 of 2015

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Dated this the 18th day of June, 2015

O R D E R

The prayer in this Crl.M.C is as follows:

“It is most humbly prayed that this Hon'ble Court may be pleased to direct the Addl. Asst. Sessions Court, North Paravur, to consider the prayer of the petitioner to plead not guilty through his pleader in S.C No.584 of 2014 on the file of the Additional Assistant Sessions Court, North Paravur.”

2. It is pointed out that the matter is now pending as S.C No. 584 of 2014 on the file of Additional Assistant Sessions Court, North Paravur and is now posted to 14.6.2015 for recording the plea of the accused. It is further stated that the petitioner has got an employment at Sultanate of Oman, and now he is working there. The petitioner intend to plead not guilty to the charges levelled against him. As he is now abroad and he is not getting leave from his foreign employment, he is not in a position to come down to India so as to appear before the Court below. The petitioner has given instructions to his counsel to plead not guilty. As per the legal principles laid by this Court in the case Noorjahan v. Moideen

[2000 (2) KLT 756] this Court has held that the accused could be permitted to plead not guilty through his pleader. That the petitioner has specifically authorized his counsel to plead not guilty in the above case and that it would not cause any prejudice to the prosecution or to any other accused. Further that the petitioner undertakes that he is prepared to appear before the court below during the trial. It is in the light of these facts and circumstances that the petitioner has sought for the aforementioned direction to the Additional Assistant Sessions Court, North Paravur to consider his prayer to plead not guilty through his pleader in Sessions case No.584 of 2014 on the file of the said court.

3. Heard Sri. S. Rajeev, the learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala.

4. This Court in the case Noorjahan v. Moideen (Supra) has held in paragraph 9 as follows:

“A consideration of the above provisions would reveal that in all cases where exemption from the personal attendance is granted and where the plea is one of 'not guilty' the court has only to allow the counsel to plead 'not guilty' for the accused, as such a plea is only of a procedural nature. In cases where the personal attendance of the accused is exempted under S.205 Cr.P.C. and it is a summons case, the Court has to record the plea of the counsel for and on behalf of the accused even if the plea is one of 'guilty'. But in warrant cases the court has to exercise its discretion in a judicial manner considering

the nature and gravity of offences and the consequence of accepting the plea. Thus the Court has the discretionary power to exempt the personal appearance of the accused even in warrant cases and to have the plea of the counsel recorded for and on behalf of the accused, when he is specifically authorized for the purpose and in appropriate cases. If after considering all the aspects of the case, the Court holds that the personal attendance of the accused is not essential, the Court can dispense with the personal attendance of the accused and the plea of the counsel can be recorded and on the basis of such plea, the Court can either convict the accused or proceed to have the trial."

5. It is not rebutted that the petitioner is now working abroad and due to lack of leave from his foreign employment, he is not in a position to appear before the court below concerned for recording his plea appears to be bonafide and therefore his prayer to plead not guilty through his counsel could be considered in the facts and circumstances of this case. Accordingly, it is ordered that it is for the petitioner to file an appropriate application through his counsel accompanied by an affidavit sworn to by the petitioner and attested by a competent officer of the foreign embassy/consulate concerned where he is now working abroad, stating the above said facts regarding his inability to come to India to attend the trial and that he is authorizing his counsel named in that affidavit so as to get the petitioner's plea of not guilty recorded before the court below and that the petitioner will not urge or plead any prejudice merely on account of his such plea being recorded through his

counsel and that the petitioner takes full responsibility in this course of action for getting his plea of not guilty recorded before the court below. Such affidavit as stated above will be accompanied by the appropriate application as aforestated, moved through the petitioner's counsel and on the motion of the said application through counsel along with such accompanying affidavit sworn to by the petitioner as aforestated, the court below after due notice to the learned Public Prosecutor concerned, will consider the said application in the light of the legal principles laid down by this Court in case Noorjahan v. Moideen (Supra) and if there are no other objections, the said prayer may be allowed so as to get the petitioner's plea of not guilty recorded through his counsel. The petitioner is given time by six weeks from today to swear to the affidavit and move application through his counsel. The court below will pass orders on the application as above stated within one week from the date of filing of such application. Until final orders are passed on the application as aforestated, further proceedings in the Sessions case will be deferred. It is further made clear that if application along with the accompanying affidavit as aforestated is not filed on behalf of the petitioner within the period of six weeks

from today, then the direction to defer the further proceedings in the Sessions case will stand vacated automatically without any further orders from this Court.

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

sd/-

sab

ALEXANDER THOMAS, JUDGE