

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

Crl.MC.No. 3682 of 2015

**LP 3/2012 IN CC.832/2008 OF JUDICIAL FIRST CLASS MAGISTRATE COURT - I,
MANJERI.**

PETITIONER/ACCUSED NO 1:

**AJEEBA M.SAHIB,
AGED 45, D/O.MEERA SAHIB,
PETTA KALLUMPURAYIDATHIL HOUSE,
VETTIPRAM MURI, PATHANAMTHITTA DISTRICT.**

**BY ADVS.SRI.R.ANIL
SRI.M.SUNILKUMAR
SRI.SUJESH MENON V.B.
SRI.T.ANIL KUMAR
SRI.MANU TOM
SRI.THOMAS ABRAHAM (NILACKAPPILLIL)
SRI.M.VIVEK
SRIA.RAJESH**

RESPONDENT/COMPLAINANT:

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**
- 2. SAKEER HUSSAIN, AGED 40,
S/O.HAMZAKUTTY, ALUNKAL VEEDU, THUVVUR ,
NILAMBUR TALUK, MALAPPURAM DISTRICT - 673 021.**

R1 BY PUBLIC PROSECUTOR SRI.C.RASHEED

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 25-06-2015 ALONG WITH TPCR. 5/2015, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:**

mbr/

ALEXANDER THOMAS, J.

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Crl.M.C.No. 3682/2015 & Tr.P(Crl.)No.5/2015

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Dated this the 25th day of June, 2015

O R D E R

Sri.B.Raman Pillai, learned Senior Counsel, instructed by Sri.V.B.Sujesh Menon, learned counsel appearing for the petitioner in Crl.M.C.No.13682/2015 submits that the petitioner has instructed to submit that the petitioner will voluntarily appear before the Judicial First Class Magistrate's Court-I, Manjeri, dealing with Calendar Case, C.C.No.832/2008 without any further delay and make necessary application in that regard including the application for grant of bail. It is further urged by the learned Senior Counsel that the law on the subject has been well settled by the decision of this Court as in *Dsella Abdul Khader v. State of Kerala* , reported in 2012 (4) KLT 535, as follows:- “... *the magistrate has issued a non-bailable warrant against such accused and proceeded with coercive steps under Ss.82 and 83 of the Code against such accused, is no ground to refuse bail when the offence imputed is bailable and she is entitled to be released on bail as of right*”. The above said submissions made by the learned Senior Counsel on behalf of the petitioner herein is recorded and it is made clear that it is open to the petitioner to proceed in accordance with law. Learned Senior

Counsel, Sri.B.Raman Pillai, instructed by Sri.V.B.Sujesh Menon, learned counsel appearing for the petitioner further submitted that this Court may direct that the application for recall of warrant and the application for grant of bail may be considered by the learned Magistrate concerned on the same day on the appearance of the petitioner, on merits and in the light of the aforementioned decision of this Court and that until then, it may be ordered by this Court that the impugned warrant pending against the petitioner may be kept in abeyance.

2. Sri.R.Bindu Sasthamangalam, learned counsel appearing for the defacto complainant (R-2 in Crl.M.C.No.3682/2105/the petitioner in Tr.P(Crl) No.5/2015) submits that in case the petitioner in Crl.M.C.No.3682/2105, who is the 1st respondent in Tr.P(Crl) No.5/2015, agrees for his prayer in the Transfer Petition for transfer of C.C.No.120/2008 now pending on the file of the Chief Judicial Magistrate's Court, Pathanamthitta, to be transferred to the file of the Judicial First Class Magistrate's Court-I, Manjeri, then he has no further objections in this regard.

3. Sri.T.S.Asaf Ali, learned D.G. of Prosecution and State Prosecutor instructed by Sri.C.Rasheed, learned Senior Government

Pleader appearing for the respondent State of Kerala, submits that in view of the fact that the entire disputes between the parties, which led to the institution of these criminal cases are those arising under Sec.420 of the I.P.C. and under Sec.138 of the Negotiable Instruments Act, which predominantly arise out of transactions between the two, the State has no serious objection to the abovesaid suggestion made by Sri.Bindu Sasthamangalam, learned counsel appearing for the defacto complainant.

4. In the light of these submissions, Sri.B.Raman Pillai, learned Senior Counsel, instructed by Sri.V.B.Sujesh Menon, learned counsel appearing for the petitioner in Crl.M.C.No.3682/2015 submits that that the petitioner in Crl.M.C.No.3682/2015, who is R-1 in Tr.P(Crl) No.5/2015, has also no objection for allowing the above said prayer of the defacto complainant made in the above said Transfer Petition and that the said C.C.No.120/2008 now pending on the file of Chief Judicial Magistrate's Court, Pathanamthitta may be ordered by this Court to be transferred to the file of the Judicial First Class Magistrate's Court-I, Manjeri. In the light of these submissions made by the rival parties, it is ordered in the interest of justice as follows:

- (i) In the event of the petitioner inc Crl.M.C.No.3682/2015 voluntarily appears before the Judicial First Class Magistrate's Court-I, Manjeri, dealing with L.P.No.3/2012, within three weeks from today and submits necessary application for recall of warrant and application for grant of bail, then the learned Magistrate concerned shall consider such applications on the same day itself, on merits and in accordance with law and pass orders thereon granting bail to the petitioner, subject to any conditions which are deemed fit and proper by the learned Magistrate. It is made clear that until a decision is taken by the learned Magistrate in the matter of grant of bail as directed above, further coercive steps that are pending in pursuance of the impugned warrant shall be kept in abeyance. If the petitioner does not voluntarily appear before the learned Magistrate within three weeks as directed above, then the directions granted in this herein above in this case will stand automatically vacated. If, on the other hand, the petitioner voluntarily appears before the learned Magistrate as directed above and secures bail as directed above, then the impugned non-bailable warrant now pending against the petitioner in view of the non-appearance before the court below will stand automatically recalled.
- (ii) As agreed to between the parties, it is further ordered in the interest of justice that, Calendar Case C.C.No.120/2008 now pending on the file of the Chief Judicial Magistrate's Court, Pathanamthitta, shall stand transferred to the file of the Judicial First Class Magistrate's Court-I, Manjeri. This order is made independent of the outcome of the directions by this Court in the paragraph immediately given above. The Court of Chief Judicial Magistrate, Pathanamthitta, shall ensure that the entire files in relation to C.C.No. 120/2008 are transferred and transmitted to the Judicial First Class Magistrate's Court-I, Manjeri, within a period of ten days from the date of receipt of a certified copy of this order. Thereafter, the Judicial First Class Magistrate's Court-I, Manjeri, shall, within ten days from the date of receipt of the records from the Chief Judicial Magistrate's Court, Pathanamthitta, issue necessary notices to all the parties concerned intimating them to appear on a particular date and so as to facilitate their engagement of counsel in those matters and to proceed with the matter in accordance with law.

With these observations and directions, Crl.M.C.No.3682/2015 and Tr.P(Crl).No.5/2015 stand finally disposed of.

sd/-
ALEXANDER THOMAS, JUDGE
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///True copy///

P.S. to Judge

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