

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

CrI.MC.No. 3688 of 2015 ()

MC.NO. 127/2015 OF SUB.DIVISIONAL MAGISTRATE COURT, FORT KOCHI

PETITIONER/COUNTER PETITIONER :

**GILBERT ANTONY
S/O. ANTONY, AGED 59 YEARS
MALIYEKKAL HOUSE, PONEKKARA
ERNAKULAM DISTRICT.**

**BY ADVS.SRI.K.S.ARUNKUMAR
SMT.M.N.MAYA
SRI.M.S.DILEEP
SMT.RESMI THOMAS
SMT.T.VANITHA**

RESPONDENT/COMPLAINANT :

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

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:**

Mn

...2/-

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APPENDIX

PETITIONERS' ANNEXURES :

**ANNEXURE I : COPY OF THE ORDER IN MC NO.127/2015 PENDING BEFORE
THE SUB DIVISIONAL MAGISTRATE, FORT KOCHI.**

RESPONDENT'S ANNEXURES : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

ALEXANDER THOMAS, J.

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Dated this the 24th day of June, 2015.

ORDER

The matter in issue raised in this Criminal Miscellaneous Cases is covered against the respondent-State by the legal principles laid down by this Court in Santhosh v. State of Kerala reported in 2014(3) KLT 837 as well as the judgment dated 19.12.2014 of this Court rendered in the case Sajeesh.K v. State of Kerala in Crl.M.C.No.7259/2014 and connected cases reported in 2014 SCC Online Ker. 27899 dealing with similar impugned proceedings under Sec. 107 of the Cr.P.C. The impugned order in this case is similar or almost identical to the one considered in the above said reported rulings of this Court.

2. Accordingly, in tune with the directions issued by this Court in the said reported decisions, the impugned orders in these cases are quashed with liberty to the Sub Divisional Magistrate concerned to take fresh action, if actually necessary, after complying with all the statutory procedural requirements and after applying the legal principles laid down in the aforementioned reported rulings of this Court and in accordance with law.

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3. Before parting with this case, this Court is constrained to make an observation that the impugned order which is seen passed by the Sub Divisional Magistrate, Fort Kochi is even without application of mind. Not even the month and day of the date of issuance of the impugned Annexue-A1 order is seen mentioned and only the year is mentioned. What is stated towards the end of the impugned order is as follows:

“Given under my hand and seal of this court this the day of 2014”

More crucially, the crime is seen registered in the year 2015, where as the impugned order is claimed to have been issued in the year 2014. It clearly shows the non-application of mind by the Sub Divisional Magistrate, who is conferred with a part of the judicial power as per Sec.107 Cr.P.C. The same mistake has been seen by this Court in a series of similar orders passed by the same Sub Divisional Magistrate, Fort Kochi in a series of cases, when this Court had occasion to deal with such matters recently. Accordingly, it is to be observed that in case the Sub Divisional Magistrate is inclined to re-initiate such further proceedings under Sec.107 Cr.P.C, it should be borne in mind that what is invested on him as per the statutory engraftment of the power under Sec.107 Cr.P.C is a part of judicial power on the executive magistracy, which

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has to be exercised with care and caution, as it may otherwise detrimentally affect the fundamental freedoms and rights of the affected parties.

4. The learned Director General of Prosecution and State Prosecutor was earlier requested in some matters that copies of the aforementioned reported rulings of this Court should be forwarded to the Sub Divisional Magistrate concerned so as to enable him to peruse such rulings so as to appreciate the niceties in the proper and fair reasonable exercise of power conferred under Sec.107 of the Cr.P.C. The Secretary to the Office of the Advocate General will ensure that the photocopies of the aforementioned rulings of this Court is immediately transmitted to the Sub Divisional Magistrate along with certified copy of this order.

With these observations and directions, the Crl.M.Cs stand finally disposed of.

ALEXANDER THOMAS,
Judge.

bkn/-