

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

CrI.MC.No. 3705 of 2015 ()

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(CMP.NO.969/2015 IN CC.NO.1197/2006 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE
COURT, THIRUVANANTHAPURAM)
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PETITIONER/COMPLAINANT:

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T.D.RAJAN,
T.C 28/878, KAITHAMUKKU, PETTAH P.O.,
THIRUVANANTHAPURAM.**

**BY ADVS.SRI.SUBHASH CYRIAC
SMTSHEEBA JOSEPH**

RESPONDENT(S)/RESPONDENT/ACCUSED:

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- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, RAM MOHAN PALACE COMPOUND,
ERNAKULAM, COCHIN.**
 - 2. M.RAMAKRISHNA PILLAI, T.C 29/539, SHELINA, PETTAH,
PETTAH, THIRUVANANTHAPURAM.**

R1 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 23-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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Crl.MC.No. 3705 of 2015 ()

APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEX A1 - TRUE COPY OF THE CHEQUE ISSUED BY THE 2ND RESPONDENT.**
- ANNEX A2 - TRUE COPY OF THE LAWYER NOTICE DT. 29.6.06 ISSUED BY THE PETITIONER.**
- ANNEX A3 - TRUE COPY OF THE REPLY NOTICE.**
- ANNEX A4 - TRUE COPY OF THE COMPLAINT CC NO. 1197/06 FILED BEFORE THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT.**
- ANNEX A5 - PETITION CMP NO. 969/2015 IN CC NO. 1197/2006 FILED BEFORE THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT, THIRUVANANTHAPURAM.**
- ANNEX A6 - TRUE COPY OF THE OBJECTION TO CMP NO. 969/15.**
- ANNEX A7 - TRUE COPY OF THE ORDER DT 15.6.15 TO CMP NO. 969/16 IN CC NO. 1197/06 THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT, THIRUVANANTHAPURAM.**

RESPONDENT(S)' ANNEXURES: **NIL**

/TRUE COPY/

P.S.TO JUDGE

sts

ALEXANDER THOMAS, J.

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Crl.M.C.No. 3705 of 2015

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Dated this the 23rd day of June, 2015

O R D E R

The petitioner herein is the complainant in C.C.No.1197/2006 on the file of the Additional Chief Judicial Magistrate's Court, Thiruvananthapuram filed under Sec.138 of the Negotiable Instruments Act against the 2nd respondent (accused therein). It is stated that the accused (R-2 herein) had contended that the cheque in question was issued by a firm and the firm is not made a party in the impugned criminal complaint alleging offence under Sec.138 of the Negotiable Instruments Act and hence accordingly, pleaded that the accused is to be acquitted on that ground. In order to get over this, the petitioner herein had filed Crl.M.P.No.969/2015 to implead the said firm as additional accused under Sec. 319 of the Code of Criminal Procedure. The said application was dismissed as per the impugned Anx.7 order dated 15.6.2015 in Crl.M.P.No.969/2015 in C.C.No.1197/2006 by the Addl. Chief Judicial Magistrate's Court, Thiruvananthapuram. It is Anx.7 order that is under challenge in

this CrI.M.C.

2. Heard.

3. It is only to be noted that the compliant in question is one filed alleging commission of offence under Sec.138 of the Negotiable Instruments Act. It is trite that the statutory notice, as envisaged in Sec.138 of that Act and the other components, are pre-requisites for the institution of a complainant. Indisputably, no such statutory notice at the relevant time has ever been issued by the petitioner (complainant) to the proposed impleading party, viz., the firm concerned. On this ground alone, the plea made by the petitioner for impleadement of that firm as an additional accused by citing the provisions of Sec.319 of the Code of Criminal Procedure, was only to be repelled. Moreover, the court below has noted that the case is already posted for final hearing after closing evidence of both sides. Merely because the accused has raised the plea that the complaint is liable to be rejected due to the non-impleadement of the party, who has actually issued the cheque, will not give any right to the complainant to cure a defect, which has gone to the root of the matter. Therefore, the court below has rightly dismissed the application for impleadement of the party, who has actually issued

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the cheque. Accordingly, there is no merit in this Crl.M.C. and the same is dismissed.

sd/-
ALEXANDER THOMAS, JUDGE

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///True copy///

P.S. to Judge