

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

Crl.MC.No. 4218 of 2015 ()

**CP.NO. 16/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT - II, MAVELIKKARA
CRIME NO. 112/2014 OF NOORANAD EXCISE RANGE OFFICE , ALAPPUZHA DISTRICT**

PETITIONER :

**SUJATHA, AGED 42 YEARS,
W/O.HARIKUMAR, HARI BHAVANAM, EDAPPON MURI,
NOORANADU VILLAGE, MAVELIKKARA TALUK.**

**BY ADVS.SRI.R.PADMAKUMAR
SRI.N.ASHOK KUMAR
SRI.P.ARAVIND**

RESPONDENT :

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

BY PUBLIC PROSECUTOR SRI.GITHESH.R.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 08-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

sts

Crl.MC.No. 4218 of 2015 ()

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEX-A: TRUE COPY OF THE MAHASSAR PREPARED BY THE EXCISE PARTY.

ANNEX-B: TRUE COPY OF THE SUMMONS DATED 19.03.2015.

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

/TRUE COPY/

P.A.TO JUDGE

sts

ALEXANDER THOMAS, J.

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Crl.M.C.No. 4218 of 2015

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Dated this the 8th day of July, 2015

O R D E R

The petitioner, a woman, is accused in Crime No.112/2014 of Nooranadu Excise Range, for alleged possession of 2.625 liters of IMFL (Indian Made Foreign Liquor). The allegation is that a woman was found near the Pandalam–Mavelikkara public road near Josco Junction Edappon and that as a woman police constable was not available, the lady accused concerned could not be arrested, etc. According to the petitioner, she has been falsely implicated in the aforestated crime. Anx.A is the mahazar said to have been prepared by the Excise authorities concerned in respect of the alleged incident, which is said to have taken place on 1.11.2014. Anx.B is the copy of the summons now served on her to appear before the court below on 15.5.2015 and that as there was no sitting on that day of the judicial officer concerned, the matter was adjourned. Apprehending remand in judicial custody, the petitioner has filed the above Crl.M.C. with the prayer for direction to the learned

Judicial First Class Magistrate's Court-II, Mavelikkara to consider the application for bail in the light of the decisions of this Court as in Biju v. State of Kerala reported in 2007 (2) KLT 28, Sreekumar v. State of Kerala reported in 2008 (3) KHC 680 = 2008 (3) KLT 748 and George v. State of Kerala and another reported in 2009 (1) KLT 160.

2. It is urged by by Sri.R.Padmakumar & Sri.N.Ashok Kumar, learned Advocates appearing for the petitioner that this Court in the case Sreekumar v. State of Kerala reported in 2008 (3) KHC 680 = 2008 (3) KLT 748, has held that having chosen to exercise the discretion under Sec.204 of the Cr.P.C. in favour of the accused and having issued only a summons to the accused, it would be heartless and would be harsh for any court to remand an accused person, who has come to the court on the invitation extended to him by the court by issuing summons and that procedure of remanding an accused in such cases is unreasonable and should not be persuaded by any court. That having exercised the discretion under Sec.204 of the Cr.P.C. and having led the accused by such conduct of the judicial officer to believe that he can safely appear before the court on invitation, it would be legally impermissible for any court

thereafter to turn turtle and remand the accused to custody. That issue of summons by exercise of discretion under Sec.204 of the Cr.P.C. does firmly and eloquently convey that the accused person on appearance shall not be detained unnecessarily, if he is willing and prepared to offer bail. That the courts cannot take the parties by surprise when they appear before court in response to an innocuous summons issued by the court and this must be so whether the offence is triable by a Magistrate or not and whether the offence is bailable or not. Paragraph 4 of the decision of this Court in Sreekumar's case *supra* reads as follows:

'4. I find it difficult to accept that such practice can be in vogue in any court. I extract S.204(1) Cr.P.C. below:

"204. Issue of process.--(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction."

(emphasis supplied)

When a court issues summons and not a warrant under S.204 Cr.P.C. in a non-bailable warrant offence, I must assume that the learned Magistrate must have advisedly exercised the discretion under S.204 Cr.P.C. to issue a summons and not a warrant. If a warrant were issued against him, the petitioner would certainly have been entitled, in the light of the dictum in *Bharat Chaudhary & Anr. v. State of Bihar* (2003 (3) KLT 956 (SC) = AIR 2003 SC 4662), to move the superior courts for anticipatory bail. Having chosen to exercise the discretion

under S.204 CrI.P.C in favour of the petitioner and having issued only a summons to the accused, it appears to me to be heartless, insensitive and harsh for any court to remand an accused person who has come to court on the invitation extended to him by the court by issuing a summons. That procedure is shockingly unreasonable and should not be pursued by any court. Having exercised the discretion under S.204 CrI. P.C. to issue only a summons and having led the accused by such conduct to believe that he can safely appear before court on invitation, it would be impermissible for any court thereafter to turn turtle and remand the accused to custody. Issue of summons by exercise of the discretion under S.204 CrI.P.C. does firmly and eloquently convey that the accused person on appearance shall not be detained unnecessarily if he is willing and prepared to offer bail. The courts will have to be careful at the stage of exercising the discretion under S.204 CrI.P.C. and cannot take parties by surprise when they appear before court in response to an innocuous summons issued by the court. This must be so whether the offence is triable by a Magistrate or not and whether the offence is bailable or not.'

3. This court in the case *George v. State of Kerala and Anr.* reported in 2009 (1) KHC 160 has held that it is very difficult to expect, presume or infer that in a case where summons is issued to an accused, he will be arrested or that he will be remanded to custody and the court again referred to the legal position laid down by this Court in the aforementioned reported ruling of 2008 (3) KHC 680 = 2008 (3) KLT 748. The decision of this Court in *Biju v. State of Kerala* reported in 2007 (2) KLT 280, was also referred to by the learned counsel for the petitioner, wherein it has been held by this Court that remanding the accused to custody pending trial in a very casual manner cannot be justified at all and that criminal court should always be careful while passing orders on bail applications

and it is in effect deals with personal liberty.

4. In the light of these aspects, it is ordered in the interest of justice that in case the petitioner voluntarily appears before the jurisdictional Magistrate (Judicial First Class Magistrate's Court-II, Mavelikkara) without much delay and submits necessary application for grant of bail, then the court below shall pass orders on the said application for bail on the same day itself and grant the same in the light of the aforestated reported rulings of this Court and after imposition of such conditions, as the learned Magistrate deems fit to do so that are found to be just, fair and necessary in the facts and circumstances of the case.

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

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge