

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

CrI.MC.No. 4433 of 2015 ()

**IN OS 16/2012 of III ADDL.SUB COURT, ERNAKULAM
IN CC 99/2012 of J.M.F.C.-I, ALUVA**

PETITIONER(S)/PETITIONERS/ACCUSED NOS.2, 3 & 4:

1. P.R.ARUN,
S/O.RADHAKRISHNAN, 6-C, BRENTWOOD MANOR,
ERNAKULAM VILLAGE, ERNAKULAM DISTRICT,
NOW RESIDING AT 301, TRAVANCORE TOWERS, NAP JUNCTION,
AZAD ROAD, KALOOR, PIN-682017.
2. MUTHUMANI SOMASUNDARAN,
W/O.P.R.ARUN, 6-C, BRENTWOOD MANOR, POWER HOUSE ROAD,
ERNAKULAM NORTH, ERNAKULAM VILLAGE, ERNAKULAM DISTRICT,
NOW RESIDING AT 301, TRAVANCORE TOWERS, NAP JUNCTION,
AZAD ROAD, KALOOR, PIN-682017.
3. P.R.VANDANA,
W/O.B.VENUGOPAL, 4-A, BRENTWOOD MANOR,
ERNAKULAM VILLAGE, ERNAKULAM DISTRICT,
NOW RESIDING AT 1-C, OAK LEAF, HEERA SWISS TOWN, PIPPINMOOD,
KANJIRAPPARA, THIRUVANANTHAPURAM, PIN-695030.

**BY ADVS.SRI.C.S.MANU
SRI.S.K.PREMRAJ**

RESPONDENT(S)/RESPONDENTS/STATE & THE COMPLAINANT:

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
2. MARIAMMA KURIAN,
W/O.C.K.KURIEN, NIRMALA(H), CHERUMATTAPURAM,
THRIKKAKARA.P.O, VAZHAKKALA VILLAGE, KANAYANNUR TALUK,
ERNAKULAM, PIN- 682 029.

R BY PUBLIC PROSECUTOR SMT. V H JASMINE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
29-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- ANNEXURE-A1:** TRUE COPY OF THE PLAINT IN O.S.1050 OF 2010 ON THE FILES OF THE 1ST ADDITIONAL MUNSIFF'S COURT,ERNAKULAM
- ANNEXURE-A2:** TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE 2ND RESOPONDENT IN O.S.1050 OF 2010 ON THE FILES OF THE 1ST ADDITIONAL MUNSIFF'S COURT,ERNAKULAM
- ANNEXURE-A3:** TRUE COPY OF THE INJUNCTION IN I.A.6798 OF 2010 IN O.S.1050 OF 2010 PASSED BY MUNSIFF'S COURT,ERNAKULAM
- ANNEXURE-A4:** TRUE COPY OF THE COMMISSION REPORT SUBMITTED BY THE ADVOCATE COMMISSIONER IN I.A.6797 OF 2010 IN O.S.1050 OF 2010 BEFORE THE MUNSIFF'S COURT,ERNAKULAM
- ANNEXURE-A5:** TRUE COPY OF THE APPEAL MEMORANDUM FILED BY THE PETITIONERS 1 AND 2 BEFORE THE DISTRICT COURT,ERNAKULAM i.e. A.S.NO.115 OF 2015
- ANNEXURE-A6 :** TRUE COPY OF THE PLAINT IN O.S.16 OF 2012 ON THE FILES OF THE IIIRD ADDITIONAL SUB-COURT,ERNAKULAM
- ANNEXURE-A7:** TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE 2ND RESPONDENT IN O.S.16 OF 2012 ON THE FILES OF THE 3RD ADDITIONAL SUB-COURT,ERNAKULAM.
- ANNEXURE-A8:** TRUE COPY OF THE PRIVATE COMPLAINT DATED 9.3.2011 FILED BY THE 2ND RESPONDENT THE *DE-FACTO* COMPLAINANT BNEFORE THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT-I, ALUVA, WHICH IS TAKEN ON FILE AS CC NO.99 OF 2012.
- ANNEXURE-A9:** TRUE COPY OF THE 2ND POSTAL COVER IN WHICH THE SUMMONS WAS ISSUED TO THE 2ND PETITIONER FROM THE COURT BY REGISTERED POST ALONGWITH THE POST ACKNOWLEDGMENT CARD.

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

P.A. TO JUDGE

P.UBAID, J.

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Crl.M.C.No.4433 of 2015

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Dated this the 29th day of July, 2015

ORDER

The petitioners herein are the accused Nos. 2 to 4 in CC No.99 of 2012 of the Judicial First Class Magistrate's Court-I, Aluva. On the apprehension of the arrest and the remand to the judicial custody in execution of warrant of arrest issued to the Court the petitioners seek orders under Section 482 Cr.P.C. directing the learned Magistrate to recall the warrant and to release the petitioners on bail. Such relief cannot be granted by this Court under Section 482 Cr.P.C. The petitioners will have to surrender before the learned Magistrate and obtain regular bail under Section 437 Cr.P.C. The grievance of the petitioners is that they had not in fact received the summons from the Court. If it is true, it will have to be considered by the learned Magistrate, when application for bail comes. I do not think that the learned Magistrate will mechanically remand the petitioners to custody. On a perusal of the materials including, the complaint that led to the crime, I find that the transaction alleged in the complaint is more of a civil nature than of a criminal nature. It appears that the real subject matter of dispute is a contract. All these aspects will have to be considered by the learned Magistrate, when request for bail comes. In the particular circumstances, this proceeding can be closed with a direction to the Court below to consider the application for bail

appropriately.

In the result, this Crl.M.C. is disposed of with a direction to the learned Magistrate having jurisdiction, that in case the petitioners made application for bail on surrender in C.C.No.99/2012, the same shall be judiciously considered and decided on the date of surrender itself. The matters discussed above will have to be considered by the learned Magistrate. Time for ten days is granted to the petitioners to surrender and apply for bail. During this period, execution of warrant of arrest will stand suspended.

Sd/-
P.UBAID
JUDGE

rkj

//TRUE COPY//

P.A. TO JUDGE