

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

Crl.MC.No. 5351 of 2015

CRIME NO. 2491/2012 OF TOWN EAST POLICE STATION , TRISSUR

PETITIONER(S)/ACCUSED :

**SURESH KUMAR, AGED 43 YEARS,
S/O.RAJAN, THARAVILA VEEDU, HOUSE NO.16/87,
KALOOR, KEEZHTHONNIKKAL VILLAGE, MANJAMALA,
THIRUVANANTHAPURAM NOW RESIDING AT THARAVILA VEEDU,
HOUSE NO.16/87, KALOOR, KEEZHATHONNAKKAL VILLAGE,
MANJAMALA, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.P.VANIL
SRI.V.S.VINEETH KUMAR
SMT.SANDRA TOM**

RESPONDENT(S)/COMPLAINANTS :

- 1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA- 682 031.**
- 2. THE SUB INSPECTOR OF POLICE,
EAST POLICE STATION, THRISSUR- 680 003**

BY PUBLIC PROSECUTOR SMT.P.MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 17-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

ANNEXURE A: CERTIFIED COPY OF THE F.I.R IN CRIME NO.2491/2012 OF THRISSUR TOWN EAST POLICE STATION, THRISSUR.

ANNEXURE B: CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.2491/2012 OF THRISSUR TOWN EAST POLICE STATION, THRISSUR.

ANNEXURE C: CERTIFIED COPY OF PROCEEDINGS/ORDER SHEET OF THE TRAIL COURT MAINTAINED BY THE CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR.

ANNEXURE D: COPY OF THE ORDER IN CRL.M.C NO.1438/2015 DATED 09/07/2015 ON THE FILE OF THE COURT OF THE PRINCIPAL SESSIONS JUDGE OF THRISSUR.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

PA.TO JUDGE.

Msd.

ALEXANDER THOMAS, J.

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Dated this the 17th day of August, 2015.

ORDER

The prayer in this Crl.M.C is as follows:

“..... to call for the records leading to issuance of Annexure C order dated 6/5/2013 in L.P.No.51/2014 on the files of Chief Judicial Magistrate Court, Thrissur and set aside the order dated 6/5/2013 in Annexure C, in the interest of justice.”

2. It is pointed out by the learned counsel for the petitioner that summons in this case was never served on him and therefore the impugned action take by the court below (Chief Judicial Magistrate Court, Thrissur) as evident from Anx-A6 proceedings and consequential steps taken to issue non-bailable warrant to the petitioner and to include the calendar case in the long pending case list and also to take impugned proceedings under Sec.82 & 83 of the Cr.P.C is without jurisdiction. The petitioner is the sole accused in C.C.No.129/2013 on the file of the Chief Judicial Magistrate Court, Thrissur (arising out of Anx-B Final Report/Charge Sheet filed in Crime No.2491/2012 of Thrissur Town East Police Station, Thrissur) for offence alleged under Sec.420 of the IPC. It is evident from Anx-C proceedings (see page 17

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of paper book) in this case that the case was taken on file as C.C.No.129/2013 on 1.4.2013 for the offence alleged under Sec.420 IPC and summons was issued to the accused and posted to 6.5.2013. However, there is no endorsement in the proceedings thereof that the summons was actually served on the petitioner. Instead the next endorsement on 6.5.2013 by the court below is that repeat non-bailable warrant to accused and posted to 17.7.2013. The proceedings reads as follows:

“Taken on file as CC 129/13 on 1.4.2013 U/s.420 IPC and issue summons to accused. Posted to 6.5.2013.

6.5.2013	:	Repeat NBW to accused to 17.7.2013.
17.7.2013	:	Call on 26.8.2013.
26.8.2013	:	Notified to 7.10.2013.
7.10.2013	:	No sitting. Notified to 25.11.2013.
25.11.2013	:	Repeat NBW to the accused call on 28.2.2014.
28.2.2014	:	Adjourned 18.6.2014.
18.6.2014	:	Accused absent. No representation. Issue steps U/s.82 and 83 Cr.P.C and notice to sureties call on 11.8.2014.
11.8.2014	:	Await steps 30.10.2014.
30.10.2014	:	Steps executed. Transferred L.P.51/2014. Issue NBW to 30.1.2015.”

3. It is not known as to how the court below could have ordered 'repeat issue of NBW' before it is ensured that summons was duly served on the accused and that thereafter warrant was issued, etc.,

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before the court below could have ordered issue of repeat NBW. On 25.11.2013 also the order shown is as repeat NBW and posted the case to 28.2.2014. On 18.6.2014, the accused was absent and no representation and therefore steps under Secs.82 & 83 Cr.P.C and notice to sureties were ordered to be issued. When there is no proceedings to establish on record that summons was issued on the petitioner, there is no question of issuing notice to the sureties of the petitioner and therefore the direction to issue notice to the sureties in such a case is absolutely without any basis and therefore consequential steps to issue proceedings under Secs.82 & 83 Cr.P.C is also without any proper foundation. In this view of the matter, this Court is of the considered opinion that the impugned proceedings of the court below in issuing NBW to the petitioner and issuance of notice to the sureties and also the issuance of steps under Secs.82 & 83 of the Cr.P.C as well as the resultant inclusion of the case in the long pending list are liable to be interdicted and accordingly those impugned proceedings of the court below are rescinded and recalled. Accordingly, it is ordered that it will be open to the petitioner to personally appear before the court below dealing with C.CNo.129/2013 without any further delay and make appropriate application for grant of bail in which case the Chief

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Judicial Magistrate Court, Thrissur shall consider the said application on the same day and grant him bail subject to imposition of any condition that are just, fair and reasonable in the facts and circumstances of the case. It is ordered in the interest of justice that the petitioner shall appear before the Chief Judicial Magistrate Court, Thrissur, within an outer time limit of two weeks from the date of issuance of a certified copy of this order. A certified copy of this order shall be produced by the petitioner before the court below along with the application for grant of bail. Consequential proceedings should also be issued by the learned Magistrate in compliance with the directions given by this Court in the matter of rescinding and recalling of the impugned proceedings referred to above. It is made clear that all other prayers for quashment of the impugned criminal proceedings are left open to be decided in other appropriate proceedings. Liberty is given to the petitioner to agitate those issues in the manner known to law.

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

ALEXANDER THOMAS,
Judge.

bkn/-