

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

Crl.MC.No. 5423 of 2015 ()

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CRL.MP. NO.1479/2015 OF ADDITIONAL DISTRICT & SESSIONS COURT-I,
ALAPPUZHA.**

CRL.MP. NO.2685/2013 OF SESSIONS COURT, ALAPPUZHA.

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PETITIONER/ACCUSED:

**SANGLI, AGED 35 YEARS,
S/O. PERUMAL THEVAR, DOOR NO.4,
WARD NO.1, KAMBAM NAGAR,
UTHAMAPALAYAM.**

BY ADV. SRI.P.SHANES METHAR.

RESPONDENT/COMPLAINANT/STATE:

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM- 682 031.**
- 2. THE CIRCLE INSPECTOR OF EXCISE,
HARIPAD EXCISE RANGE,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM -682 031.**

BY PUBLIC PROSECUTOR SMT.P. MAYA.

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 11-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

**ANNEXURE I: TRUE COPY OF THE ORDER IN CRL.MP NO.2685/2013 ON
THE FILE OF THE SESSIONS JUDGE, ALAPPUZHA.**

**ANNEXURE II: TRUE COPY OF THE ORDER IN CRL.MP.NO.1479/2015 ON
THE FILE OF THE COURT OF ADDL. SESSIONS JUDGE I,
ALAPPUZHA.**

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

B. KEMAL PASHA, J.

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Crl.M.C. No. 5423 of 2015
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Dated this the 11th day of December, 2015

ORDER

The complaint of the petitioner is that while passing Annexure II order, the petitioner against whom the said order was passed was not given an opportunity of being heard. It is also stated that no notice was issued to the petitioner. The court below has invoked the power under Section 439(2) Cr.P.C. by ordering arrest of the accused, which has the effect of cancellation of bail. Of course the ground on which the court below has exercised the power under section 439(2) Cr.P.C is a valid ground to exercise the said power. At the same time, it was mandatory on the part of the court below to give an opportunity of being heard to

the petitioner. On that score alone, Annexure II order is liable to be set aside.

In the result, this Crl.M.C. is allowed and Annexure II order stands set aside. Crl.M.P. 1479/2015 of the court below stands revived and the matter is remitted to the court below for fresh disposal in accordance with law, after giving an opportunity to the petitioner to put forward his contention, if any. The petitioner shall appear before the court below on 22.01.2016.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge