

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

Crl.MC.No. 5804 of 2015

**ORDER DATED 11-12-2014 IN CMP 5132/2014 of CHIEF JUDICIAL MAGISTRATE,
ERNAKULAM
MC 104/2015 of SUB DIVISIONAL MAGISTRATE COURT, FORT KOCHI
.....**

PETITIONER(S):

**SOBY GEORGE, AGED 47 YEARS,
S/O.KORA GEORGE, KAKKANATTU HOUSE, NELLIMATTOM,
KUTTAMANGALAM, KOTHAMANGALAM, ERNAKULAM.**

BY ADV. SRI.SABU S.KALLARAMOOLA

RESPONDENT(S):

- 1. SUB DIVISIONAL MAGISTRATE,
FORT KOCHI, ERNAKULAM - 695 001.**
- 2. SUB INSPECTOR OF POLICE,
CENTRAL POLICE STATION, ERNAKULAM - 695 018.**

BY SENIOR PUBLIC PROSECUTOR SMT.SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
17-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEXURE-A1:** TRUE COPY OF THE BROCHURE PUBLISHED BY THE PETITIONER'S GROUP.
- ANNEXURE-A2:** TRUE COPY OF SALE AGREEMENT DATED 13.2.13.
- ANNEXURE-A3:** TRUE COPY OF AGREEMENT DATED NIL EXECUTED BETWEEN PETITIONER AND ONE SMIJU THOMAS.
- ANNEXURE-A4:** TRUE COPY OF SALE AGREEMENT DATED 4.2.14.
- ANNEXURE-A5:** CERTIFIED COPY OF ORDER IN M.C.NO.104/2015 OF SUB DIVISIONAL MAGISTRATE, FORT KOCHI.
- ANNEXURE-A6:** TRUE COPY OF THE COMMON ORDER DATED 11.12.2014 OF THE CJM COURT, ERNAKULAM.

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

B. KEMAL PASHA, J.

.....
Crl.M.C. No.5804 of 2015
.....

Dated this the 17th day of September, 2015

ORDER

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Annexure-A5 preliminary order purportedly issued under Section 111 Cr.P.C. by the learned Sub Divisional Magistrate, Fort Kochi is under challenge. Through Annexure-A5, the court below wanted to proceed against the petitioner under Section 107/109 Cr.P.C.

2. Heard the learned counsel for the petitioner and learned Public Prosecutor.

3. The learned Public Prosecutor has reported that the petitioner is an accused in 29 criminal cases registered for the offences punishable under Sections 406 and 420 IPC.

4. As rightly pointed out by the learned counsel for the petitioner, Annexure-A5 does not make it clear as to whether the court below was intending to proceed against

the petitioner under Section 107 Cr.P.C. or 109 Cr.P.C. The scenario contemplated under Section 107 Cr.P.C. and the one under 109 Cr.P.C. are totally different. In the case of Section 107 Cr.P.C., the Executive Magistrate should get an information that any such person is likely to commit breach of peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of peace or disturb the public tranquility. In such case, such person should be ordered to execute a bond for getting the peace for such period not exceeding one year.

5. In the case of Section 109 Cr.P.C., the Executive Magistrate should get an information that such a person is taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence. In such case, such a person could be ordered to execute a bond for his good behaviour for such period not exceeding one year. From a reading of Section 107 Cr.P.C. and Section 109 Cr.P.C., it is

evident that the said two provisions are totally different. Here in this particular case, the learned Sub Divisional Magistrate has issued Annexure-A5 preliminary order purportedly one under Section 111 Cr.P.C. without revealing that he wanted to proceed against the petitioner under Section 107 Cr.P.C. or 109 Cr.P.C. or both. Matters being so, Annexure-A5 order is liable to be quashed.

In the result, this CrI.M.C. is allowed and Annexure-A5 order is quashed. The learned Sub Divisional Magistrate is directed to issue a fresh order in accordance with law.

Sd/-  
**(B.KEMAL PASHA, JUDGE)**

aks/17/09

*// True Copy //*

*PA to Judge*