

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

Crl.MC.No. 6018 of 2015 ()

**SC.NO. 4/2014 OF SPECIAL COURT (NDPS ACT CASES), VADAKARA
CRIME NO. 351/2001 OF KASBA POLICE STATION, KOZHIKODE**

PETITIONER/2ND ACCUSED :

**R.K.USMAN, S/O.ABDU,
RARAM KANDATH HOUSE, THRIKKANAPURAM
(VIA) THAVANNOOR, MALAPPURAM DISTRICT.**

BY ADV. SRI.P.K.ABOOBACKER (EDAPPALLY)

RESPONDENTS/COMPLAINANT :

- 1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, PIN-682 031.**
- 2. THE ASSISTANT COMMISSIONER OF POLICE
KOZHIKODE SOUTH, KOZHIKODE, PIN-673 720.**

R1 & R2 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 30-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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...2/-

Crl.MC.No. 6018 of 2015 ()

APPENDIX

PETITIONERS' ANNEXURES :

ANNEXURE A1 : TRUE PHOTOCOPY OF THE FIRST INFORMATION REPORT
DT.19-10-2001 IN CRIME NO. 351/2001 OF KOZHIKODE CUSBA
POLICE STATION.

ANNEXURE 2 : CERTIFIED COPY OF THE FINAL REPORT DT.19-4-2002 IN
CRIME NO. 351/2001 OF KOZHIKODE CUSBA POLICE STATION.

ANNEXURE 3 : TRUE PHOTOCOPY OF THE JUDGMENT DT.17-6-2004 IN
CRIMINAL APPEAL NO. 1149/2003.

ANNEXURE 4 : TRUE PHOTOCOPY OF THE WRITE UP APPEARED IN THE
DESABHIMANI DAILY DT.22-5-15.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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B. KEMAL PASHA, J.

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Crl.M.C. No.6018 of 2015 G
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Dated this the 30th day of September, 2015

ORDER

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Petitioner is the 2nd accused in Crime No.351/2001 of Kasaba Police Station, Kozhikode registered for the offence punishable under Section 21 of the NDPS Act. On investigation, final report was filed against the petitioner by arraigning him as the 2nd accused by alleging that he was found keeping brown sugar beneath the bed spread on his cot. The 1st accused in the crime was arrested from the bus stand. As the petitioner was absconding, he could not be arrested. The trial against the 1st accused was conducted and it ended in a conviction and sentence. The same was challenged before this Court and vide judgment dated 17.06.2004, this Court allowed the appeal and acquitted the 1st accused.

2. According to the learned counsel for the petitioner, the said accused was acquitted by disbelieving the arrest of the 1st accused. The absconding accused, who is the petitioner

herein, cannot encash the judgment passed by this Court in appeal relating to the conviction and sentence of the 1st accused. (See ***Moosa Vs. Sub Inspector of Police*** [2006 (1) KLT 552]). Presently, the case against the petitioner is pending as SC No.4/2014 before the Special Court for NDPS Cases, Vadakara. The petitioner has got a case that there is no seizure mahazar also in the case. Those matters can be brought to the notice of the court below at the stage of Section 227 Cr.P.C.

3. In case of an application for the said purpose by the petitioner before the court below, the court below shall consider the same at the stage of Section 227 Cr.P.C. and shall pass appropriate orders in accordance with law.

With the said liberty, this CrI.M.C. is dismissed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/30/09

// True Copy //

PA to Judge