

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

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

Crl.MC.No. 6178 of 2015

**ORDER DATED 20-08-2015 IN CRL.MP 2236/2015 OF SESSIONS COURT, KOLLAM
CRIME NO. 1658/2015 OF KOLLAM EAST POLICE STATION**
.....

PETITIONER(S)/1ST ACCUSED:

**JAMES GEORGE @ BASALIYOS MARTHOMA
YAKOB-PRADAMAN, AGED 54 YEARS,
MARTHOMA PRADHAMAN, S/O.GEORGE, MODERN GROUP HOUSE,
CHEMMAMUNDA, VADAKKEVILA, KOLLAM DISTRICT.**

BY ADV. SRI.RAJIT

RESPONDENT(S)/STATE:

**STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY SENIOR PUBLIC PROSECUTOR SMT.SAREENA GEORGE

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

msv/

Crl.MC.No. 6178 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEXURE A: TRUE COPY OF THE ORDER DTD.20.8.2015 IN CRL.MP.NO.2236/2015 OF
THE LEARNED SESSIONS JUDGE, KOLLAM.**

**ANNEXURE B: TRUE COPY OF THE ORDER DTD.10.9.2015 IN CRL.MP.NO.2361/2015 OF
THE SESSIONS JUDGE, KOLLAM.**

**ANNEXURE C: TRUE COPY OF THE ORDER PASSED BY THIS HON'BLE COURT IN
BA.NO.5546/2015 DTD.10.9.2015.**

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

[CR]

B.KEMAL PASHA, J.

.....
CRL. M.C. No. 6178 of 2015
.....

Dated this the 17th day of September, 2015

ORDER

What is under challenge is Annexure A. The petitioner is the first accused in Crime No.1658/2015 of the East Police Station, Kollam, registered for the offences punishable under Sections 420, 468 and 471 read with Section 34 of the Indian Penal Code.

2. Some grave allegations are levelled against the petitioner. The petitioner was placed under arrest on 23.07.2015. He was released on bail by the learned Chief Judicial Magistrate, Kollam on 05.08.2015. By that time, the 3rd accused was not arrested. The prosecution has approached the court below with a petition under Section

439(2) Cr.P.C. seeking the cancellation of bail granted to the petitioner. It seems that through Annexure A order, the learned Sessions Judge has chosen to cancel the bail of the petitioner by invoking the power under Section 439(2) Cr.P.C.

3. Much discussion is not required to conclude that the court below, being a Sessions Court, has no power to 'cancel the bail' by invoking the power under Section 439(2) Cr.P.C. The provisions contained under Sections 439(2) Cr.P.C. and 437(5) Cr.P.C. are not meant for cancellation of bail; whereas those provisions are meant for arrest of an accused who was enlarged on bail. For such an arrest under Section 437(5) Cr.P.C. as well as under Section 439(2) Cr.P.C. sufficient grounds should be there. It seems that the court below has gone to the extent of cancelling the bail granted to the petitioner, which was quite uncalled for under Section 439(2) Cr.P.C. The court below has chosen to cancel the bail of the petitioner mainly on the ground that

the 3rd accused was at large.

4. Subsequently, the 3rd accused was arrested on 22.08.2015. He was enlarged on bail by the Sessions Court on 07.09.2015. It seems that, even after that, the petitioner had once again approached the court below under Section 439 Cr.P.C. seeking bail. Through Annexure B order, the said application was once again dismissed. This Court is of the view that Annexure B order is nothing but adding insult to the injury .

5. Through Annexure A order, the court below has not invoked the power under Section 439(2) Cr.P.C. When the said provision is made for arrest, the court below ought not to have cancelled the bail by invoking that provision. Annexure A is an improper exercise of power under Section 439(2) Cr.P.C. The said provision has been totally misread by the court below. Annexure A order is *per se* illegal, irregular and improper. It further reveals gross jurisdictional error. Matters being so, Annexure A order is liable to be

quashed.

In the result, this Crl.M.C. is allowed and Annexure A order dated 20.08.2015 in Crl.M.P.No.2236/2015 in Crime No.1658/15 of the Kollam East Police Station is hereby quashed.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge