

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN**

**TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937**

**Crl.MC.No. 6213 of 2015**  
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**CC.NO.397/09 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, ATTINGAL.  
CRIME NO. 120/2004 OF ATTINGAL POLICE STATION, THIRUVANANTHAPURAM.**  
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**PETITIONER/ACCUSED NO.2:**  
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**ROBIN ANTONY, S/O ANTONY, PURATHOOR HOUSE,  
VADUKATTU POLICE HOUSING COMPLEX, WARD NO. ,  
THRISSUR CORPORTATION, VIYOOR VILLAGE,  
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.**

**BY ADVS.SRI.P.HARIDAS  
SMT.S.SIKKY  
SRI.P.C.SHIJIN**

**RESPONDENT(S)/STATE & COMPLAINANT:**  
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- 1. STATE OF KERALA,  
REPRESETED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682 031.**
- 2. SUB INSPECTOR OF POLICE,  
ATTINGAL POLICE STATION,  
THIRUVANANTHAPURAM-695 101.**

**BY PUBLIC PROSECUTOR SMT.P.MAYA**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 22-09-2015, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:**

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**APPENDIX**

**PETITIONER(S)' ANNEXURES:**  
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- ANNEXURE 1:** TRUE COPY OF THE ORDER OF ACQUITTAL IN CC NO. 41/05  
OF FIRST CLASS MAGISTRATE -I, ATTINGAL DT. 20/4/09.
- ANNEXURE 2:** TRUE COPY OF THE ORDER IN CMP 3716/15 IN CC NO. 397/09  
(RE-FILED) OF FIRST CLASS MAGISTRATE -I, ATTINGAL  
DT. 2/9/15.
- ANNEXURE 3:** TRUE COPY OF THE CMP NO. 3780/15 IN CC 397/09 FILED  
BEFOR THE FIRST CLASS MAGISTRATE COURT-I, ATTINGAL  
DT. 7/9/15.
- ANNEXURE 4:** TRUE COPY OF THE CMP NO. 3781/15 IN CC 397/09 FILED  
BEFOR THE FIRST CLASS MAGISTRATE COURT-I, ATTINGAL  
DT. 7/9/15.

**RESPONDENTS' ANNEXURES:** NIL.

//TRUE COPY//

P.S. TO JUDGE

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**K.RAMAKRISHNAN, J.**

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**Crl.M.C.No. 6213 of 2015**

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Dated this the 22<sup>nd</sup> day of September, 2015

**O R D E R**

This is an application filed by the petitioner, who is the 2<sup>nd</sup> accused in C.C.No.397/2009 on the files of the Judicial First Class Magistrate's Court-I, Attingal, for giving direction to the Magistrate to dispose of the petition pending before that court under Section 482 of the Code of Criminal Procedure (for short 'the Code').

2. It is alleged in the petition that the petitioner was arraigned as 2<sup>nd</sup> accused in a crime registered against several persons including the petitioner by the 2<sup>nd</sup> respondent, alleging offences under Sections 476, 482, 483, 485, 486, 420 and 487 of the Indian Penal Code and Section 63 of the Copy Right (Amendment) Act and it was taken originally on file as C.C.No.41/2005 on the files of the Judicial First Class Magistrate's Court-I, Attingal and the 1<sup>st</sup>

accused faced trial and he was acquitted by Annexure-A1 order.

3. The case against the petitioner was split up and re-filed as C.C.No.397/2009. He was on bail during crime stage. Since no summons was received, he could not appear. Later, he surrendered before the court on 01.09.2015 and obtained bail as per Annexure-A2 order with conditions inter alia to produce his passport. Accordingly, he surrendered his passport. Since he had to go back in connection with his employment before 15.10.2015 as his visa will be expired, he filed Annexure-A4 petition as C.M.P.No.3781/2015 for return of the passport and also Annexure-A3 petition for granting permanent exemption. But the court below without passing orders, adjourned the case to a distant date. If no orders have been passed in that application, he would be put to serious hardship and he is likely to lose his employment. Hence this petition is filed seeking direction to the Magistrate to

dispose of those applications.

4. Heard Sri.P.Haridas, the learned counsel for the petitioner and Smt.Maya, the learned Public Prosecutor appearing for the State.

5. The learned counsel for the petitioner submitted that unless those applications are disposed of, he will be put to serious hardship as he is likely to lose his employment, he had to go back and get the visa renewed. He is prepared to come back and co-operate with the trial of the case. He wants only a shorter period for going and coming back.

6. The applications are opposed by the Public Prosecutor on the ground that he was an absconding accused earlier and that was the reason, when he appeared, his passport was directed to be surrendered and if the passport is returned, he is likely to abscond again. It is an admitted fact that the petitioner was arraigned as 2<sup>nd</sup> accused in C.C.No.41/2005 on the files of the Judicial First Class Magistrate's Court-I, Attingal along with other

accused persons and since he did not appear, the case against the 1<sup>st</sup> accused was ended in acquittal as per Annexure A1 order and the case against the petitioner was split up and refiled as C.C No. 397/2009. When he came to know about the pendency of the case, he is surrendered and as per Annexure-A2 order, he was granted bail with conditions inter alia to surrender his passport. Now, he filed Annexures A3 and A4 petitions seeking permanent exemption from appearance and also for return of the passport, on the ground that, his visa will expire on 15.10.2015 and will have to report for his employment otherwise he is likely to lose his employment. He has also undertaken that he will appear before the court below as and when his presence is required and co-operate with the trial of the case. But it may be mentioned here that when an application has been filed for seeking certain relief with some urgency, the court below is expected to dispose of his application at the earliest possible time, so that even if it

goes against the petitioner, he can approach the higher court for proper relief. Further, it is mentioned in the petition itself that he is working abroad and he has got leave only upto 15.10.2015 and will have to report for his employment otherwise he is likely to lose his employment. So, under such circumstances, when an application has been filed for return of the passport and also an application has been filed for permanent exemption, the court below is expected to pass orders of the application at the earliest possible time. So, considering the circumstances, it appears that the grievance of the petitioner is genuine. So, the petition is allowed and a direction is issued to the Judicial First Class Magistrate's Court-I, Attingal to dispose of the application filed by the petitioner in C.C 397/2009 for return of passport and also for permission to appear through counsel as expeditiously as possible, at any rate, within '10' days from the date of receipt of a copy of this order. The court below is also directed to consider the

dictum laid down in the decision reported in **Ashok Kumar v. State** [2009 (2) KLT 712] and subsequent decision on this aspect by this Court while considering the application for return of passport in the pending matters.

Office is directed to communicate this order immediately by fax as far as possible.

Sd/-  
**K.RAMAKRISHNAN,**  
**JUDGE.**

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