

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

Crl.MC.No. 5362 of 2014

**CC 387/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, ERNAKULAM
CRIME NO. 251/2000 OF ERNAKULAM CENTRAL POLICE STATION, ERNAKULAM**

PETITIONER(S)/ACCUSED -I:

**BINU VARKEY, AGED 37 YEARS,
S/O.VARKEY, THOOPUMKARAYIL, MARADI VILLAGE,
MOOVATTUPUZHA.**

BY ADV. SRI.C.P.JDAYABHANU

RESPONDENT(S)/COMPLAINANT:

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

BY SRI.TOM JOSE PADINJAREKKARA(ADDL.D.G.P.)

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 29-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

Crl.MC.No. 5362 of 2014

APPENDIX

PETITIONER(S)' ANNEXURES

ANNEXURE I- JUDGMENT IN C.C.1068/2005 DATED 6.3.2014 PASSED BY THE JFCM COURT-II, ERNAKULAM.

ANNEXURE II- A PHOTOCOPY OF THE FINAL REPORT PENDING AS C.C.387/2014 ON THE FILE OF JFCM COURT-II, ERNAKULAM.

RESPONDENT(S)' ANNEXURE

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

B. KEMAL PASHA, J.

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Crl.M.C. No. 5362 of 2014
.....

Dated this the 29th day of September, 2015

ORDER

Petitioner is the first accused in Crime No.251/2000 of the Central Police Station, Ernakulam for the offence punishable under Section 20(b)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 read with Section 34 of the IPC.

2. On completion of the investigation, final report was filed and the matter was taken cognizance of by the Judicial First Class Magistrate's Court-II, Ernakulam as C.C.No.1068/2005. The petitioner was absconding. A2 faced the trial and it ended in an acquittal.

3. *Inter alia*, the court below in Annexure-I judgment found that the prosecution could not prove sufficient compliance of Section 50 and some other statutory

provisions of the NDPS Act. It is the case of the petitioner that no purpose would be served if the trial is conducted, on account of the non-compliance of the statutory provisions of the Act. Based on the decision rendered by the Division Bench of this Court in ***Moosa v. Sub Inspector of Police*** [2006 (1) KLT 552], the petitioner cannot encash the observations and findings in Annexure A1 judgment as such. Of course, the petitioner can moot the said question before the court below at the stage of 239 Cr.P.C. The petitioner is permitted to move an application under Section 239 Cr.P.C., and in such case the court below shall pass appropriate orders on it. The court below shall not insist the personal appearance of the petitioner till the stage of 239 Cr.P.C.

With the above observations, this Crl.M.C. is dismissed.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge