

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

Crl.MC.No. 6650 of 2015 ()

**CP.NO. 26/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -II,ATTINGAL
CRIME NO. 38/2012 OF KAZHAKOOTTAM EXCISE RANGE, THIRUVANANTHAPURAM**

PETITIONER(S)/ACCUSED NO.2 & 4:

- 1. CHANDRABABU,
AGED 53 YEARS, S/O.ARJUNAN,
OOTTUKUZH KALLUVILA HOUSE, KATTACHALKUZH DESOM,
VENGANOOR VILLAGE, THIRUVANANTHAPURAM DISTRICT.**
- 2. SYAMALAN,
AGED 49 YEARS, S/O.PUSHPANGADAN, KALLUVILA HOUSE,
MANGATTUKONAM DESOM, AAYIRUPARA VILLAGE,
THIRUVANANTHAPURAM.**

BY ADV. SRI.NIREESH MATHEW

RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 02-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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B. KEMAL PASHA, J.

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CRL.M.C. No.6650 of 2015
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Dated this the 2nd day of November, 2015

ORDER

The petitioners are A2 and A4 in CP No.26 of 20125 of the Judicial First Class Magistrate's Court-II, Attingal, which has arisen from Crime No.38/2012 of the Kazhakoottam Excise Range, for the offence punishable under Section 57 (a) of the Abkari Act. The said offence is punishable with imprisonment of either description for a term up to 5 years or with fine or with both. In such case, as per Schedule II of classification of offences against other laws of the Code of Criminal Procedure, 1973, the said offence is triable by a Magistrate of the I Class. The offence being not one exclusively triable by a Court of Session, the learned Magistrate ought not to have numbered the case as C.P.No.26/2015, as the same could not be committal proceedings.

2. Another grave illegality pointed out by the learned counsel for the petitioners is that when summons were ordered and summons were not issued or served, non bailable warrant has been issued against these petitioners. Matters being so, the committal proceedings before the court below by way of CP No.26/2015 are liable to be quashed.

In the result, this CrI.M.C. is disposed of on the following lines:

The committal proceedings before the court below by way of CP No.26/2015, are hereby quashed. The court below shall take cognizance of the matter in appropriate manner in accordance with law and shall proceed with the matter and issue summons to the petitioners. The NBW ordered in the matter shall be recalled.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge