

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

OP(Crl.).No. 199 of 2015 (Q)

CC.NO. 13/2013 OF CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM

PETITIONER:

**ASHRAFF BECKER,
S/O.LATE P.BACKER,AGED 54 YEARS,
BUSINESS, MANAGING DIRECTOR
M/S.ASR DREDGING SERVICES PVT LTD,
DESHABHIMANI ROAD,KOCHI -682 026**

**BY SRI.S.SREEKUMAR,SENIOR ADVOCATE
ADV. SRI.M.S.IMTHIYAZ AHAMMED**

RESPONDENT:

**CENTRAL BUREAU OF INVESTIGATION,
CBI/ACB/KOCHI, ERNAKULAM, PIN- 682 020,**

BY SRI.P.CHANDRASEKHARA PILLAI, C.B.I.

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION
ON 01-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

OP(Crl.).No. 199 of 2015 (Q)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1:- TRUE COPY OF A CRIME REGISTERED BY CBI NUMBERED AS RC NO.5(A)
OF 2012 OF CBI/SPE/COCHIN
- P2:- TRUE COPY OF THE FINAL REPORT FILED BY THE RESPONDENT
- P3:- TRUE COPY OF THE ORDER IN CRL.M.C.NO.1594/2014 DTD 3/7/2014
- P4:- TRUE COPY OF THE DISCHARGE PETITION CMP NO.3877/2014 FILED BY
PETITIONER
- P5:- TRUE COPY OF THE ORDER DTD 16/2/2015 IN CMP NO.3877/2014 IN CC NO.
13/2013

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

ALEXANDER THOMAS, J.

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O.P (Crl.) No.199 of 2015

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Dated this the 1st day of July, 2015

J U D G M E N T

The prayer in this O.P Crl. is to set aside the impugned Ext.P5 order rendered by the Court of Chief Judicial Magistrate, Ernakulam on 16.2.2015, whereby the prayer of the petitioner seeking discharge was rejected on the ground that the petitioner's counsel was not available for arguments in the matter.

2. Heard. S. Sreekumar, learned Senior Counsel instructed by Sri.Thomas P. Kuruvila, learned counsel appearing for the petitioner and Sri. P. Chandrashekara Pillai, learned Standing Counsel appearing for the CBI.

3. The impugned order at Ext.P5 is as follows:

“Petitioner is not willing to argue the matter. CBI prosecutor ready for hearing. In these circumstances petition is closed”

4. This Court as per Ext.P3 judgment dated 3.7.2014 had directed that the prayer of the petitioner seeking discharge should be considered on the merits by the court below concerned. It is in

the light of this back ground that the petitioner had submitted C.M.P No.3877/2014 before the court below in C.C No.13/2013 before the court below which happened to be dismissed as Ext.P5 for the reason as aforestated.

5. The prayer made by the petitioner is opposed by Sri. P. Chandrashekara Pillai, learned Standing Counsel appearing for the respondents CBI. Taking into account the totality of the facts and circumstances of this case and in the interest of justice it is ordered that the impugned Ext.P5 order will stand set aside. C.M.P No. 3877/14 will stand remitted back for the consideration of the court below and the court below shall consider the matter afresh, and take a decision thereon after granting reasonable opportunity to be heard to the petitioner's senior counsel and to the learned Prosecutor appearing for the respondent CBI. It is further ordered in the interest of justice that the petitioner will ensure that his senior counsel/counsel advocate will appear on 9.7.2015 at 11. A.M before the court below and on which date the petitioners' senior counsel will address his arguments and submissions and as far as possible the learned prosecutor for the

CBI will also make submissions on the same day or on the immediate next available day as may be deemed fit and appropriate by the court below and may pass orders without further delay.

With these observations and directions, the O.P (Crl.) will stand finally disposed of.

sd/-

sab

ALEXANDER THOMAS, JUDGE