

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

Tr.P(Crl.).No. 64 of 2015 ()

PETITIONER(S)/PETITIONER/DEFACTO COMPLAINANT :

**HAMSA A.V., AGED 42 YEARS
S/O.VEERAN, ANTHIKKATTU HOUSE, U.C.COLLEGE.P.O
ALUVA WEST VILLAGE, VELIYATHUNAD KARA, PIN-683102.**

**BY ADVS.SRI.P.T.DINESH
SMT.SINDHU S KAMATH**

RESPONDENT(S)/RESPONDENTS:

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. K.MUHAMMED,, AGED 55 YEARS
S/O KUNJU, PALAKKAPARAMBIL HOUSE, U.C.COLLEGE.P.O
ALUVA WEST VILLAGE, VELIYATHUNAD KARA, PIN-683102.**
- 3. THE INVESTIGATING POLICE OFFICER,
IN CRIME NO.142/2005
ALUVA EAST POLICE STATION(NOW ALUVA EAST)
ALUVA EAST POLICE STATION, SUB-JAIL ROAD, ALUVA
PIN-683101.**
- 4. STATION HOUSE OFFICER OF ALUVA POLICE STATION,
WHO PREPARED THE FINAL REPORT AND CONNECTED RECORDS IN CRIME
NO.142 OF 2005 ALUVA POLICE STATION(NOW ALUVA EAST)
AND FILED THEM BEFORE THE COURT
ALUVA EAST POLICE STATION, SUB-JAIL ROAD, ALUVA
PIN-683101.**
- 5. M.P.MANJUSHA,
ADVOCATE, PERUMBAVOOR, PIN-683642.**
- 6. V.N.SUNIL KUMAR,
ADVOCATE, SUB-JAIL ROAD, ALUVA
PIN-683101.**
- 7. THE ASSISTANT PUBLIC PROSECUTOR,
JUDICIAL FIRST CLASS MAGISTRATE COURT NO.1
PERUMBAVOOR, PIN-683542.**

BY DIRECTOR GENERAL OF PROSECUTION SRI.T.ASIF ALI

**THIS TRANSFER PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION
ON 31-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONERS' ANNEXURES :

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| ANNEXURE P-1 | TRUE COPY OF THE STATEMENT DATED 5.2.2005 PREPARED BY THE POLICE UNDER SECTION 161 Cr.P.C |
| ANNEXURE P-2 | TRUE COPY OF THE C.M.P.NO.394 OF 2015 IN C.C.NO.549 OF 2009 DATED 23.3.2015 ON THE FILE OF THE HONOURABLE JUDICIAL FIRST CLASS MAGISTRATE COURT NO-I, PERUMBAVOOR. |
| ANNEXURE P-3 | TRUE COPY OF THE ARGUMENT NOTE DATED 16.4.2015 IN C.M.P.NO.394 OF 2015 IN C.C.549 OF 2009 DATED 23.3.2015 ON THE FILE OF THE HONOURABLE JUDICIAL FIRST CLASS MAGISTRATE COURT NO-I, PERUMBAVOOR. |
| ANNEXURE P-4 | TRUE COPY OF THE PETITION DATED 6.4.2015 FILED BY THE PETITIONER BEFORE THE HONOURABLE REGISTRAR (VIGILANCE) OF THE HONOURABLE HIGH COURT OF KERALA. |
| ANNEXURE P-5 | TRUE COPY OF THE PETITION DATED 13.4.2015 FILED BY THE PETITIONER BEFORE THE HONOURABLE REGISTRAR (VIGILANCE) OF THE HONOURABLE HIGH COURT OF KERALA. |
| ANNEXURE P-6 | TRUE COPY OF THE C.M.P.NO.448 OF 2015 IN C.C.NO.549 OF 2009 DATED 23.3.2015 ON THE FILE OF THE HONOURABLE JUDICIAL FIRST CLASS MAGISTRATE COURT NO-I, PERUMBAVOOR. |
| ANNEXURE P-7 | TRUE COPY OF THE ORDER DATED 16.4.2013 IN C.C.NO.549 OF 2009 DATED 23.3.2015 ON THE FILE OF THE HONOURABLE JUDICIAL FIRST CLASS MAGISTRATE COURT NO-I, PERUMBAVOOR. |
| ANNEXURE P-8 | TRUE COPY OF THE AFFIDAVIT DATED 5.5.2015 FILED BY THE PETITIONER BEFORE THE HONOURABLE JFCMC-I, PERUMBAVOOR |
| ANNEXURE P-9 | TRUE COPY OF THE ORDER SHEETS OF THE HONOURABLE JFCMC-I AT PERUMBAVOOR IN C.C.NO.549/2009. |
| ANNEXURE P-10 | TRUE COPY OF THE ORDER SHEETS OF THE HONOURABLE JFCMC-I AT PERUMBAVOOR IN C.C.NO.549/2009. |
| ANNEXURE P-11 | TRUE COPY OF THE FINAL ORDER DATED 17.6.2015 IN CRL.M.P.NO.(TRANSFER) 908/2015 PASSED BY THE HONOURABLE SESSIONS COURT, ERNAKULAM |
| ANNEXURE P-12 | TRUE COPY OF THE PETITIONER'S REPLY STATEMENT DATED 8.6.2015 FILED BEFORE THE HONOURABLE SESSIONS COURT, ERNAKULAM. |

RESPONDENTS' ANNEXURES :

NIL

/TRUE COPY/

PA TO JUDGE

VS

ALEXANDER THOMAS, J.

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T.P.(Crl)No.64 of 2015

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Dated this the 31st day of July, 2015

ORDER

The prayer in this petition is for a direction from this Court to transfer C.C.No.549/2009 and C.M.P.No.394/2015 in C.C.No.549/2009, now pending on the file of the Judicial First Class Magistrate's Court, Perumbavoor to any other competent Magistrate Court within Ernakulam Sessions Division.

2. Heard Sri.P.T.Dinesh, learned counsel for the petitioner and the learned Director General of Prosecution (hereinafter called 'the D.G. of Prosecution' for short) appearing for the first respondent State of Kerala.

3. The petitioner has urges two grounds in the memorandum of this petition in order to support his prayer for transfer of the case. The first ground is based on certain allegations raised against the judicial officer concerned. The second ground is based on the aspect that the prosecutor attached to the court concerned is a respondent in Crl.M.P.No.394/2015 in C.C.No.549/2009 and therefore since there is only one prosecutor available in that court and as he is a respondent in

one of the cases, viz; C.M.P.No.394/2015, the only way of dealing with the situation is the transfer of the case from the Judicial First Class Magistrate's Court, Perumbavoor to any other court.

4. Sri.P.T.Dinesh, learned counsel for the petitioner fairly submits that the petitioner is not pressing the first ground in support of his prayers, as he has a very strong contention based on the aforestated second ground. The learned D.G. of Prosecution appearing on behalf of the respondent prosecution agency submits that since the prosecutor concerned attached to the Judicial First Class Magistrate Court, Perumbavoor is arrayed as a respondent in the case concerned, viz; C.M.P.No.394/2015, the respondent state authorities including the prosecution agency have no objection, whatsoever, to order the transfer of this case from the present court at Perumbavoor to any other nearby court. It is also submitted by the learned D.G. of Prosecution that in view of the aforestated factual aspects, it is actually necessary that the case to be transferred to another court because the prosecutor concerned may not be able to appear in those matters and it will be rather difficult for the prosecution agency to engage another prosecutor from another court to deal with this case in

the court at Perumbavoor, which would cause more inconvenience and hardships to the prosecution agency itself. He would further submits that in this regard that if this Court is so inclined, then the case may be ordered to be transferred to the nearest Magistrate Court concerned, viz; Judicial First Class Magistrate Court, Kothamangalam.

5. Sri.P.T.Dinesh learned counsel for the petitioner fully accepts these submissions made by the respondent prosecution agency. On a consideration of these matters, this Court is of the considered opinion that there is absolutely no necessity to examine the correctness of the first ground and this is so because in view of the fair submission now being made by the D.G. of Prosecution, the prayer of the petitioner is only to be considered and allowed. Accordingly, it is ordered in the interest of justice that C.C.No.549/2009 and C.M.P.No.394/2015 in C.C.No.549/2009 shall stand transferred from the file of Judicial First Class Magistrate Court, Perumbavoor to the Judicial First Class Magistrate Court, Kothamangalam. The court at Perumbavoor shall ensure that the entire case records in these matters are transferred and transmitted to the court at Kothamangalam without much delay, at any rate, within a period

of two weeks from the receipt of a certified copy of this judgment. On receipt of the case records by the court at Perumbavoor, the said court at Kothamangalam shall issue notice to both sides, so as to intimate the respective parties concerned for making necessary arrangements and to proceed with the matter.

With these observations and directions, this CrI.M.C stands finally disposed of.

Sd/-
ALEXANDER THOMAS
JUDGE

VS