

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

WP(C).No. 23387 of 2014 (W)

AGAINST THE JUDGMENT IN CC 437/2002 of C.J.M.PATHANAMTHITTA DATED
12-09-2006

PETITIONER(S):

T.MOHAMMED ASHRAF AGED 55 YEARS
S/O. HAJI.K. ASSAINAR, 4-B, LINK HEIGHTS
PANAMPILLY NAGAR, COCHIN-682036.

BY ADVS.SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH

RESPONDENT(S):

1. STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY
HOME DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.
2. THE DIRECTOR OF PROSECUTION,
OFFICE OF THE DIRECTOR OF PROSECUTION
KERALA HIGH COURT, ERNAKULAM.
3. THE UNION OF INDIA,
REPRESENTED BY ITS JOINT SECRETARY
MINISTRY OF HOME AFFAIRS, NDCC-II, JAI SING ROAD
NEW DELHI-110001.
4. M/S. ABRAHAM TRADING CORPORATION,
REPRESENTED BY ITS MANAGING PARTNER
MRS. ANNIE ABRAHAM, MAMMOOTIL, KALLUMPURAM
MAVELIKKARA - 690 101.

R3 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R4 BY ADV. SRI.K.I.MAYANKUTTY MATHER
R4 BY ADV. SRI.P.P.RAMACHANDRAN
R1 & R2 BY GOVERNMENT PLEADER SMT.S.HYMA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
02-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 23387 of 2014 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1. TRUE PHOTOSTAT COPY OF THE JUDGMENT RENDERED IN C.C. NO. 437/2002 OF THE CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA, DATED 12-9-2006.

EXT.P2.TRUE PHOTOSTAT COPY OF THE SAID JUDGMENT RENDERED IN APPEAL BY THE ADDITIONAL DISTRICT AND SESSIONS JUDGE(ADHOC) FAST TRACK COURT-II, PATHANAMTHITTA, IN CRL. APPEALNO. 363 OF 2006 DATED 26-10-2007.

EXT.P3. TRUE PHOTOSTAT COPY OF THE JUDGMENT IN CRL. R.P. NO. 4154 OF 2007 OF THIS HON'BLE HIGH COURT, DATED 25-1-2009.

EXT.P4.TRUE PHOTOSTAT COPY OF THE JUDGMENT IN SLP(CRL) NO. 8479 OF 2009 WAS DISMISSED ON 23-11-2009.

EXT.P5. TRUE PHOTOSTAT COPY OF THE REPRESENTATIONFILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 18-10-2013.

EXT.P6.TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER BEFORE THE PRESIDENT OF INDIA DATED 27-3-2010.

EXT.P7.TRUE PHOTOSTAT COPY OF THE INTERIM ORDER IN W.A. NO. 829 OF 2010 DATED 25TH MAY 2010.

EXT.P8.TRUE PHOTOSTAT COPY OF THE COMMUNICATION NO. 34220/B1/2010/HOME DATED 25-1-2011 SENT BY THE 1ST RESPONDENT TO THE 3RD RESPONDENT.

EXT.P9.TRUE PHOTOSTAT COPY OF THE COMMUNICATION DATED 21-7-2014 ISSUED BY THE 3RD RESPONDENT.

EXT.P10. TRUE PHOTOSTAT COPY OF THE REPRESENTATION MADE BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 4TH AUGUST, 2014.

RESPONDENT(S)' EXHIBITS

EXT.R4 (a): TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN W.P (C) NO.14918 OF 2010

/TRUE COPY/

P.S TO JUDGE

P.UBAID, J.
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**W.P (C ) No.23387 of 2014**  
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Dated this the 2nd March 2015

J U D G M E N T

The writ petitioner herein is a convict in C.C No.437 of 2002 of the Chief Judicial Magistrate's Court, Pathanamthitta. The Criminal Appeal brought by him against the conviction was dismissed, and he lost in the Criminal Revision brought before this Court also. The Hon'ble Supreme Court also disallowed the request for special leave. Thus, the conviction has become final under the legal process, and now execution steps are being taken by the trial court to enforce the sentence. The writ petitioner seeks orders from this Court under Article 226 of the Constitution of India staying the execution proceedings on the ground that he has sought interference of the President of India on a mercy petition. On 5.2.2015, this Court directed the petitioner to address the court, how the present writ petition is maintainable when the whole prosecution process stands closed by the judgment of the Hon'ble Supreme Court. The conviction and sentence

against the petitioner herein was confirmed at all levels. Now, it is submitted from the other side that the petitioner's request before the President also stands disallowed. Thus, there is no proceeding now before any authority. In fact, this Court cannot stay the execution proceedings under Article 226 of the Constitution of India on the ground of pendency of a request before the President of India for mercy. Anyway, that request also stands disallowed now. Thus, continuance of this writ petition will not serve any purpose. Accordingly, this writ petition is dismissed.

**Sd/-
P.UBAID
JUDGE**

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/True copy/ P.S to Judge