2024:KER:59771

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 6TH DAY OF AUGUST 2024 / 15TH SRAVANA, 1946

CRL.MC NO. 5170 OF 2013

AGAINST THE ORDER/JUDGMENT DATED 02.02.2009 IN WA NO.19 OF 2008 OF HIGH COURT OF KERALA ARISING OUT OF THE ORDER/JUDGMENT DATED IN OS NO.204 OF 2013 OF ASSISTANT SESSIONS COURT/ADDITIONAL SUB COURT, PALAKKAD

PETITIONER/S:

1 PAUL MANI
S/O.MANI, THERUVUKUNNEL HOUSE, KOLANI
KARAYIL,KARINKUNNAM VILLAGE, THODUPUZHA TALUK.

2 JISHA
W/O.BARNARD, THERUVUKUNNEL HOUSE, KOLANI
KARAYIL,KARINKUNNAM VILLAGE, THODUPUZHA TALUK.

3 JEENA
W/O.PAUL, THERUVUKUNNEL HOUSE, KOLANI
KARAYIL,KARINKUNNAM VILLAGE, THODUPUZHA TALUK.

BY ADVS.
SRI.P.VIJAYA BHANU (SR.)
SRI.P.M.RAFIQ
SRI.VIPIN NARAYAN

RESPONDENT/S:

1 SHINE AUGUSTINE
S/O.M.T.AUGUSTINE, MADAKKAL HOUOLAPPARA
KARAYIL,KUDAYATHUR VILLAGE, THODUPUZHA TALUK 685 584.

2 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM 682 031.

BY ADVS.
SRI.G.ANOOP MOHAN
SRI.S.K.PREMJITH MENON

OTHER PRESENT:

SRI.SANGEETHARAJ.N.R, PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06.08.2024, ALONG WITH Crl.MC.5948/2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

2024:KER:59771

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 6TH DAY OF AUGUST 2024 / 15TH SRAVANA, 1946

CRL.MC NO. 5948 OF 2013

AGAINST THE ORDER/JUDGMENT DATED IN CC NO.136 OF 2013 OF CHIEF JUDICIAL MAGISTRATE ,THODUPUZHA

PETITIONER/S:

ROY @ BERNARD
S/O.MANI THERUVUKUNNEL HOUSE, KOLANI KARAYIL,
KARINKUNNAM VILLAGE, THODUPUZHA TALUK

BY ADVS.
SRI.P.VIJAYA BHANU (SR.)
SRI.P.M.RAFIQ
SRI.VIPIN NARAYAN

RESPONDENT/S:

1 **SHINE AUGUSTINE**
S/O.M T AUGUSTINE, MADAKKAI HOUOLAPPARA KARAYIL,
KUDAYATHUR VILLAGE, THODUPUZHA TALUK-686655

2 **STATE OF KERALA**
REP BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM-682031

BY ADVS.
SRI.S.K.PREMJITH MENON
SRI.BINU V V VEETTIL VALAPPIL,SRI.SANGEETHARAJ NR,PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06.08.2024, ALONG WITH Crl.MC.5170/2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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P.V.KUNHIKRISHNAN, J

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Crl.M.C. Nos. 5170 & 5948 of 2013

Dated this the 6th day of August, 2024

O R D E R

These Criminal Miscellaneous cases are filed by the accused in CC No. 136/2013 on the file of the Chief Judicial Magistrate Court, Thodupuzha. The offences alleged are under Secs. 420, 468, 471, 120(B) r/w 34 IPC.

2. After hearing the counsel for the petitioners in length, I am of the considered opinion that the contention raised by the petitioners is to be raised before the trial court by filing a discharge petition, if the charge is not framed. If such a discharge petition is filed, there can be a direction to consider the same without insisting the presence of the petitioners. All the contentions raised by the petitioners in these Crl.M.C.s are left open and the petitioners are free to

raise all those contentions before the trial court by filing a discharge petition.

Therefore, these Criminal Miscellaneous cases are disposed of with the following directions :

1. The petitioners are free to file a discharge petition before the jurisdictional court within thirty days from the date of receipt of a stamped certified copy of this order, if charge is not framed.

2. Once such a discharge petition is received, the jurisdictional court will consider the same and pass appropriate orders in it, after giving an opportunity of hearing to the petitioners and the Prosecutor concerned, as expeditiously as possible, at any rate, within a period of six weeks from the date of receipt of the discharge petition.

3. If a discharge petition is filed as directed above, the presence of the petitioners shall not be insisted, till final orders are passed in the discharge petition.

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4. All the contentions raised by the petitioners in these criminal miscellaneous cases are left open and the petitioners are free to agitate the same in the discharge petition.

Sd/-

P.V.KUNHIKRISHNAN
JUDGE

SKS

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APPENDIX OF CRL.MC 5948/2013

PETITIONER ANNEXURES

C:-TRUE COPY OF THE LEGAL NOTICE ISSUED BY 2ND PERTIES TO IST ACCUSED TERMINATING ANNEXURE B LICENSE AGREEMENT

A:-TRUE COPY OF THE JUDGMENT IN WA NO 19/2008 OF THIS HON'BLE COURT, DTD 2/2/2009

B:-TRUE COPY OF THE LICENCE AGREEMTN DTD 1/5/2011

D:-TRUE COPY OF THE PRIVATE COMPLAINT IN CC NO 136/2013 OF THE COURT OF CJM , THODUPUZHA

E:-TRUE COPY OF THE CHARGE SHEET IN CC NO 136/2013 OF THE COURT OF CJM , THODUPUZHA

F:-TRUE COPY OF THE COMMISSION REPORT IN OS NO 204/2013 OF THE COURT OF ADDITIONAL SUB JUDGE, PALAKKAD

G:-TRUE COPY OF THE 161 STATEMENT OF CW4.THE MACHINGAL RANGE OFFICER, ALATHUR

H:-TRUE COPY OF THE AGREEMENT DTD 18/4/2013

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APPENDIX OF CRL.MC 5170/2013

PETITIONER ANNEXURES

ANNEXURE-A: TRUE COPY OF THE JUDGEMENT IN WA NO.19/2008 OF THIS HON'BLE COURT DATED 2.2.2009

ANNEXURE-B: TRUE COPY OF LICENCE AGREEMENT DATED 1.5.2011

ANNEXURE-C: TRUE COPY OF THE LEGAL NOTICE ISSUED TO 1ST ACCUSED TERMINATING ANNEXURE B LICENCE AGREEMENT

ANNEXURE-D: TRUE COPY OF THE PRIVATE COMPLAINT IN C.C.NO.136/2013 OF THE COURT OF CHIEF JUDICIAL MAGISTRATE, THODUPUZHA.

ANNEXURE-E: TRUE COPY OF THE CHARGE SHEET IN C.C.NO.136/2013 OF THE COURT OF CHIEF JUDICIAL MAGISTRATE, THODUPUZHA.

ANNEXURE-F: TRUE COPY OF THE COMMISSION REPORT IN O.S.NO.204/2013 OF THE COURT OF ADDITIONAL SUB JUDGE, PALAKKAD.

ANNEXURE-G: TRUE COPY OF THE 161 STATEMENT OF CW4, THE MACHINGAL RANGE OFFICER, ALATHUR.

ANNEXURE-H: TRUE COPY OF THE AGREEMENT DATED 18.4.2013