



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 3RD DAY OF APRIL 2024 / 14TH CHAITHRA, 1946

CRL.MC NO. 10593 OF 2023

AGAINST CC NO.996 OF 2021 OF JUDICIAL MAGISTRATE OF FIRST
CLASS-XII, THIRUVANANTHAPURAM

PETITIONERS/ACCUSED 1 TO 4:

- 1 CARNIVAL FILMS PVT. LTD.
CARNIVAL HOUSE,
BEHIND DINDOSHI FIRE STATION,
OFF. GENERAL A.K.VAIDYA MARG,
MALAD (EAST), MUMBAI,
MAHARASHTRA, PIN - 400097.
REPRESENTED BY ITS DIRECTOR
PRASANTH NARAYANAN,
AGED 50 YEARS, S/O NARAYANAN NAIR,
CARNIVAL HOUSE,
BEHIND DINDOSHI FIRE STATION,
OFF. GENERAL A.K.VAIDYA MARG,
MALAD (EAST), MUMBAI,
MAHARASHTRA, PIN - 400097
- 2 SUNIL PUTHEN VEETIL
AGED 56 YEARS,
S/O. VADAKE VEETIL NARAYANA MARAR,
FORMER CHIEF EXECUTIVE OFFICER,
CARNIVAL HOUSE,
BEHIND DINDOSHI FIRE STATION,
OFF. GENERAL A.K.VAIDYA MARG,
MALAD (EAST), MUMBAI,
MAHARASHTRA, PIN - 400097
- 3 KUNAL SAWHNEY
AGED 40 YEARS, S/O SOMNATH SAWHNE,
FORMER ADDITIONAL DIRECTOR,
CARNIVAL FILMS PVT. LTD.,
CARNIVAL HOUSE,
BEHIND DINDOSHI FIRE STATION,
OFF. GENERAL A.K.VAIDYA MARG,
MALAD (EAST), MUMBAI,
MAHARASHTRA, PIN - 400097



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4 RENI VARUGHESE
AGED 49 YEARS, S/O A.M.VARUGHESE,
FORMER ADDITIONAL DIRECTOR,
CARNIVAL FILMS PVT. LTD.,
CARNIVAL HOUSE,
BEHIND DINDOSHI FIRE STATION,
OFF. GENERAL A.K.VAIDYA MARG,
MALAD (EAST), MUMBAI,
MAHARASHTRA, PIN - 400097

BY ADVS.
SRI.ARUN SAMUEL
SRI.JITHIN BABU A

RESPONDENTS/STATE & COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

2 MALABAR COMMERCIAL PLAZA PVT. LTD
HAVING ITS REGISTERED OFFICE AT 41/2299,
3RD FLOOR, MALABAR GATE,
RAM MOHAN ROAD, PUTHIYARA P. O.,
CALICUT DISTRICT,
KERALA, PIN - 673004,
REPRESENTED BY ITS AUTHORIZED REPRESENTATIVE
SHADULY HASSAN,
AGED 39 YEARS, S/O HASSAN T.,
RESIDING AT SAYOOK,
KODATHUMPOYIL, KACHERI ROAD,
KAKKODI P.O., CALICUT DISTRICT,
KERALA, PIN - 673611

BY SRI. M.SREEKUMAR
SMT. SREEJA V., PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 25.03.2024, THE COURT ON 03.04.2024 PASSED THE
FOLLOWING:



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BECHU KURIAN THOMAS, J.**Crl.M.C. No.10593 of 2023**Dated this the 3rd day of April, 2024**ORDER**

Petitioners are accused 1 to 4 in C.C. No.996/2021 on the files of the Judicial First Class Magistrate's Court-XII, Thiruvananthapuram. Petitioners challenge the summons issued to them and the consequential warrants issued by the Magistrate.

2. The first petitioner is a private limited company registered with the Registrar of Companies, Gwalior, engaged in various businesses. Petitioners are all allegedly residing outside Kerala. The second respondent is the complainant in C.C. No.996/2021 alleging an offence punishable under section 138 of the Negotiable Instruments Act, 1881 (for short "N.I.Act"). After filing the case in 2021, the learned Magistrate had repeatedly adjourned the case till 23.11.2023, which compelled the second respondent to approach this Court in O.P.(Crl.) No.730/2023, and a direction was issued to dispose of the matter in a time-bound



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manner. Thereafter, the learned Magistrate advanced the case to 27.10.2023 and issued summons to all the accused.

3. On receipt of the summons, the accused have preferred this petition under section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C'), challenging the proceedings, contending that the trial court had issued summons without conducting any enquiry under section 202 Cr.P.C and contrary to the judgment of the Constitution Bench of the Supreme Court in **Re: Expeditious Trial of Cases under section 138 of the N.I.Act 1881** (AIR 2021 SC 1957).

4. I have heard Sri. Arun Samuel, the learned counsel for the petitioners, Sri.M.Sreekumar, the learned counsel for the second respondent and Smt.V.Sreeja, learned Public Prosecutor.

5. In the decision **In Re: Expeditious Trial of Cases under section 138 of the N.I.Act 1881** (AIR 2021 SC 1957) the Supreme Court held that section 145 of the N.I.Act has been brought in as an exception to section 202 Cr.P.C and evidence by way of affidavit was permitted to be given in any enquiry or trial which provision was inserted with the laudable object of speeding up trial of complaints filed under section 138 of the N.I.Act. It was further observed that if the evidence of the



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complainant can be given on affidavit, there was no reason to insist on the evidence of the witnesses to be taken on oath.

6. In **Sunil Todi and Others v. State of Gujarat and Another** (2021 SCC OnLine SC 1174) the Supreme Court observed that "it is not necessary for the Magistrate to postpone the issuance of process in each and every case. Further, it has also been held that not conducting enquiry under section 202 of the Code would not vitiate the issuance of process if requisite satisfaction can be obtained from the materials available on record."

7. In the instant case, the proceeding on 27.10.2023 does not indicate that the Magistrate had perused any affidavit. When the case came up for consideration, the Registry of this Court was asked to obtain a report from the Magistrate whether any enquiry under section 202 Cr.P.C was conducted or not. By a communication dated 16-12-2023, the learned Magistrate has reported that records reveal that cognizance of the complaint was taken on 12-07-2021 and an affidavit in lieu of enquiry had not been filed nor was there any posting for enquiry.

8. In cases arising under the N.I.Act, even if an inquiry under section 202 Cr.P.C has not been conducted, the same



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cannot vitiate the issuance of process. The requisite satisfaction need only be available from the materials on record. If the materials on record are not sufficient to arrive at such a satisfaction, then the accused will be justified in stating that the absence of reference to any affidavit would vitiate the proceedings.

9. In the instant case, the learned Magistrate issued summons without having any affidavit on record. Having regard to the above circumstances, I am of the view that since the materials on record do not indicate any affidavit having been filed in lieu of enquiry under section 202 Cr.P.C, cognizance taken by the Magistrate is wrong in law.

10. Hence the summons issued to the petitioners in C.C. No.996/2021 are hereby quashed and consequently, the warrants issued against the petitioners are also set aside. The Judicial First Class Magistrate's Court-XII, Thiruvananthapuram, is directed to proceed in the above referred case, from the stage of enquiry under section 202 Cr.P.C afresh, which shall be completed within one month from the date of receipt of a copy of this order. The complainant is given the liberty to file an affidavit in lieu of such enquiry, and if so filed within the period



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mentioned above, the Magistrate will be at liberty to act in accordance with the observation in **Sunil Todi's case** (supra).

This Crl.M.C is allowed.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps



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APPENDIX

PETITIONER'S/S' ANNEXURES

- Annexure 1 TRUE COPY OF THE COMPLAINT NUMBERED AS C.C. NO. 996/2021 DATED NIL FILED BY THE 2ND RESPONDENT BEFORE THE JUDICIAL FIRST-CLASS MAGISTRATE'S COURT-XII, THIRUVANANTHAPURAM.
- Annexure 2 TRUE COPY OF THE SUMMONS DATED 12.07.2021 ISSUED TO THE 1ST PETITIONER IN C.C. NO. 996/2021 BY THE JUDICIAL FIRST-CLASS MAGISTRATE'S COURT-XII, THIRUVANANTHAPURAM.
- Annexure 3 TRUE COPY OF THE SUMMONS DATED 12/07/2021 ISSUED TO THE 2ND PETITIONER IN C.C. NO. 996/2021 BY THE JUDICIAL FIRST-CLASS MAGISTRATE'S COURT-XII, THIRUVANANTHAPURAM.
- Annexure 4 TRUE COPY OF THE SUMMONS DATED 12/07/2021 ISSUED TO THE 3RD PETITIONER IN C.C. NO. 996/2021 BY THE JUDICIAL FIRST-CLASS MAGISTRATE'S COURT-XII, THIRUVANANTHAPURAM.
- Annexure 5 TRUE COPY OF THE B DIARY EXTRACT OF C.C. NO. 996/2021 BEFORE THE JUDICIAL FIRST-CLASS MAGISTRATE'S COURT-XII, THIRUVANANTHAPURAM.
- Annexure 6 TRUE COPY OF THE OFFICIAL MEMORANDUM DATED 26/07/2021 ISSUED BY THIS HON'BLE COURT.
- Annexure 7 TRUE COPY OF THE STATUS OF C.C. NO. 996/2021 BEFORE THE JUDICIAL FIRST-CLASS MAGISTRATE'S COURT-XII, THIRUVANANTHAPURAM RECEIVED FROM THE WEBSITE OF E-COURTS.



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RESPONDENT 'S/S' ANNEXURES

**Annexure R2 (a) TRUE COPY OF THE AFFIDAVIT DATED
30.06.2021 FILED BY AUTHORISED
REPRESENTATIVE OF THE 2ND RESPONDENT IN
CC NO.996/2021 BEFORE THE JUDICIAL FIRST
CLASS MAGISTRATE COURT-XII,
THIRUVANANTHAPURAM**

**Annexure R2 (b) TRUE COPY OF THE AFFIDAVIT DATED
30.06.2021 FILED BY AUTHORISED
REPRESENTATIVE OF THE 2ND RESPONDENT IN
CC NO.996/2021 BEFORE THE JUDICIAL FIRST
CLASS MAGISTRATE COURT-XII,
THIRUVANANTHAPURAM**