

Crl.MC.No.10405/23

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2025:KER:11408

"CR"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 27TH DAY OF JANUARY 2025 / 7TH MAGHA, 1946

CRL.MC NO. 10405 OF 2023

AGAINST THE ORDER DATED 08.11.2023 IN CC NO.1216 OF 2022
OF JUDICIAL MAGISTRATE OF FIRST CLASS -II, KOCHI

PETITIONER:

CHINNAMMA GEORGE,
AGED 86 YEARS
W/O KORA GEORGE, KALAGRAHAM, NELLIMATTOM,
KOTHAMANGALAM, ERNAKULAM, PIN - 686691

BY ADVS.
C.S.MANU
DILU JOSEPH
C.A.ANUPAMAN
T.B.SIVAPRASAD
C.Y.VIJAY KUMAR
MANJU E.R.
ANANDHU SATHEESH
ALINT JOSEPH
PAUL JOSE

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RESPONDENTS :

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

- 2 HIGH COURT OF KERALA
 REPRESENTED BY REGISTRAR GENERAL
 SUO MOTU IMPEADED AS ADDITIONAL R2 AS PER ORDER
 DATED 20.01.2025)

OTHER PRESENT:

PP M.C.ASHI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
23.01.2025, THE COURT ON 27.01.2025 PASSED THE FOLLOWING:

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V.G.ARUN, J

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Crl.MC.No.10405 of 2023

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Dated this the 27th day of January, 2025

ORDER

Petitioner is the sole accused in C.C.No.1216 of 2022 on the files of the Judicial First Class Magistrate Court-II, Kochi. The case originated from Crime No.1731 of 2014 registered at the Palluruthy Police Station for the offence under Section 420 read with 34 of IPC against petitioner and two others. On filing of final report, the case was numbered as C.C.No.1584 of 2015 and after trial and final hearing, the case was posted for pronouncement of judgment. The petitioner having remained absent on the date of judgment, her case was split up and re-numbered as C.C.No.1216 of 2022, and judgment pronounced in the case of the other two accused, sentencing them to



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undergo rigorous imprisonment for three years and pay fine of Rs.10,000/- each.

2. Learned counsel for the petitioner submits that his client, aged 84 years, was disabled from being present on the date of judgment as she is suffering from colon cancer (carcinoma rectum middle third). Even though a petition under Section 353 read with 205 of Cr.P.C, to exempt petitioner from personal appearance and permit her counsel to receive the judgment was submitted, trial court rejected the petition as per Annexure A-5 order. It is submitted that the petitioner is even now bedridden and in her present condition, it is not possible for her to be present in court. Referring to the proviso to Section 353(6) of the Code of the Criminal Procedure, it is contended that since two out of the three accused were present in court on the date of judgment, the learned Magistrate could have pronounced judgment in the petitioner's case also, notwithstanding her absence. It is the contention of the learned counsel that this Court, in exercise of the inherent power



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vested with it under Section 482 of the Code, can permit the petitioner to appear in court through virtual mode on the date of judgment.

3. I heard the learned Public Prosecutor also.

4. Chapter XXVII of the Code deals with judgments in criminal cases. Section 353(6) therein makes the attendance of the accused, other than those in custody, mandatory for hearing the judgment, except in cases where personal appearance of the accused is dispensed with during trial and the sentence is one of fine only or when the accused is acquitted.

5. The proviso to Section 353(6) of the Code carves out an exception to this mandate by empowering the court to pronounce judgment even in the absence of one or more accused, if the other accused are in attendance. In the case at hand, instead of adopting such procedure, judgment was pronounced in the case of the accused present in court after splitting up the petitioner's case. Such procedure having been adopted, benefit of the proviso to section 353(6) cannot now be



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extended to the petitioner. Be that as it may, this Court cannot be oblivious to the plight of the petitioner, an aged and sickly lady. In situations like this, the Electronic Video Linkage Rules for Courts (Kerala), 2021 can be put to use for securing the ends of justice. In this regard, it is pertinent to note that Rule 3(1) provides for usage of video conferencing facilities at all stages of judicial proceedings, which would include pronouncement of judgment also.

6.Yet another relevant provision is Section 29(2) of the Code, as per which the maximum sentence that can be imposed by a Magistrate of First Class is imprisonment for a term not exceeding three years. Being so, the Magistrate convicting the accused can release him/her on bail under Section 389(3)(i) for such period, so as to afford the accused sufficient time to present appeal and obtain order suspending the sentence. But, for that, the convicted person should be on bail. The petitioner's bail has been cancelled for reason of her failure to appear in court on the date of judgment. The pitiable situation



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in which the petitioner is placed calls for grant of extraordinary relief. Hence, proceedings by which petitioner's bail was cancelled is set aside and the petitioner is declared to be on bail on the strength of bail bonds executed by her earlier.

7. Then the question arises as to how the requirement of executing bail bonds can be satisfied. The answer to the question is available in Section 445 of the Code, which provides for grant of permission to deposit money or Government Promissory notes in lieu of bonds.

8. The above discussion leads to the conclusion that in cases where the accused is physically incapacitated from being present in court for the purpose of hearing the judgment and the court pronouncing the judgment is the Judicial First Class Magistrate Court, permission can be granted to the accused to appear through virtual mode, provided he/she is on bail.

9. Accordingly, the Crl.M.C is disposed of with the following directions;

i) The petitioner shall be permitted to appear through



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virtual mode on the date fixed for pronouncement of judgment by the jurisdictional Magistrate in accordance with the procedure prescribed in the Electronic Video Linkage Rules for Courts (Kerala), 2021.

ii) The Magistrate can fix the date and time for such appearance.

iii) Prior to the date so fixed, petitioner shall file an affidavit undertaking to execute the requisite bonds or to furnish security in the form of cash or Government Promissory notes, within the time granted by the court.

sd/-

V.G.ARUN, JUDGE



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APPENDIX OF CRL.MC 10405/2023

PETITIONER ANNEXURES

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| Annexure A-1 | TRUE COPY OF THE JUDGMENT DATED 14-12-2022 IN CC NO.1584 OF 2015 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT-II, KOCHI |
| Annexure A-2 | TRUE COPY OF THE BIOPSY REPORT DATED 14-2-2012 ISSUED BY DR. SMITHA PAULSON, PATHOLOGIST, DDRC, KOCHI TO THE PETITIONER |
| Annexure A-3 | TRUE COPY OF THE DISCHARGE SUMMARY DATED 16-2-2012 OF THE PETITIONER |
| Annexure A-4 | TRUE COPY OF THE CRL.MP NO.2590 OF 2023 IN CC NO.1216 OF 2022 FILED BY THE PETITIONER BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT -II, KOCHI |
| Annexure A-5 | TRUE COPY OF THE ORDER DATED 8-11-2023 IN CRL.MP NO.2590 OF 2023 IN CC NO.1216 OF 2022 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT-II, KOCHI |