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CR

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 23RD DAY OF SEPTEMBER 2024 / 1ST ASWINA, 1946

CRL.MC NO. 5706 OF 2017

CRIME NO.54/2017 OF TOWN WEST POLICE STATION,

THRISSUR

AGAINST THE ORDER/JUDGMENT DATED IN CC NO.87 OF
2017 OF CHIEF JUDICIAL MAGISTRATE, THRISSUR

PETITIONERS/ACCUSED NOS.1 & 2:

1 VINOD

2 RESHMI

BY ADVS.
SRI.G.SANTHOSH KUMAR (P) .
SRI.JEEVAN BALAKRISHNAN

RESPONDENTS/STATE & DE FACTO COMPLAINANT:

1 STATE OF KERALA
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

2 SURESH



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BY ADV.
SRI.SANGEETHARAJ.N.R, PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 23.09.2024, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:



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"CR"

P.V.KUNHIKRISHNAN, J.

Crl.M.C. No.5706 of 2017

Dated this the 23rd day of September, 2024

O R D E R

This Criminal Miscellaneous Case is filed to quash the proceedings in C.C. No.87/2017 on the file of the Chief Judicial Magistrate Court, Thrissur.

2. I am sitting in the jurisdiction of the final hearing of Writ Petitions and Criminal Miscellaneous Cases from January 2024 onwards. There is a general tendency from the trial courts and other tribunals to adjourn cases if there is a submission to the effect that there is a stay order from the High Court. If there is such a submission, even without getting a copy of the stay order or an affidavit from the parties to that effect, the courts and tribunals are adjourning



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the matter recording that the matter is stayed by the High Court. I have come across several such cases in which the presiding officers of courts and tribunals are adjourning cases for years based on oral submission that, there is stay from the High Court, when no such orders are passed by this Court. With technological advancements, anybody can check the status of the High Court cases by simply browsing the High Court website. But without doing the same, the courts, tribunal and other judicial forums are adjourning the matter, relying only on the submissions of the counsel/parties that the case is stayed by this Court, when no such orders are passed by this Court. This Criminal Miscellaneous is a classic example to show the same.

3. This Crl.M.C. was filed on 16.08.2017. When this Crl.M.C. came up for consideration on 17.08.2017, this Court passed the following order:



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"Admit.

Issue notice to the 2nd respondent. The petitioners shall not be arrested."

4. Thereafter, when the matter came up for consideration on 03.11.2017, the petitioners sought adjournment for taking steps. Thereafter the case was listed before this Court only on 30.07.2024. On that day this Court passed the following order:

"Petitioners will take steps to issue notice to the 2nd respondent.

The Registry will get a report from the Chief Judicial Magistrate Court, Thrissur and find out why in the e-court it is stated that the case is stayed. This Court only passed an order "not to arrest the petitioners."

If there is no other stay from any other proceedings, the learned Magistrate will proceed with the case.

Post along with the report on 29.08.2024."

5. Now the learned Magistrate submitted a report on 14.08.2024. The relevant portion of the



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above report is extracted hereunder:

"In obedience to the reference cited, I most humbly submit this report for kind consideration.

I have joined this office only on 04-06-2024. The case in question was first dealt by me on 11-07-2024 and on that day, it was submitted by the parties that the matter is stayed by the Hon'ble High Court. On going through the proceedings sheet, it is seen that it was reported by the parties that matter was stayed. Since, I couldn't find any such order in the file, the case was posted for production of such order or orders if any. But, on 27-07-2024, parties prayed time to produce order."

6. The learned Magistrate observed that she took charge in the court on 04.06.2024 and she dealt with the case only on 11.07.2024. On that day, the parties submitted that the case is stayed by the High Court. The learned Magistrate perused the proceeding sheet and thereafter, the above report was prepared. In the report it is stated that the parties submitted before the court that the matter is stayed. But the



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learned Magistrate clearly stated that, no such order was there in the file. Even then the case was adjourned stating that the matter is stayed. Now seven years elapsed. For the last seven years, the trial court adjourned the case stating that the matter is stayed by this Court based on the submissions of the parties, when there is absolutely no stay order passed by this Court. This cannot be allowed to continue. I have seen several such cases in which there will not be any stay order from this Court and even then the trial court records the submission of the parties and adjourns the matter stating that the case is stayed.

7. Now anybody can access the case search facility in the High Court website to find out whether there is any stay in any proceedings or whether the stay already granted is extended by this Court. The court cannot blindly accept the submission of the



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parties and adjourn the matter stating that the matter is stayed without getting a copy of the order or an affidavit of the parties stating that the case is stayed or the interim order already granted is extended by this Court. The court can direct its office to verify the case search facility of the High Court website to find out whether the stay already granted is extended or not. Some reasonable time also can be given to the parties to produce the stay order, because it may take some time to bring up a case pending before this Court for extension of interim order. But the cases cannot be adjourned indefinitely recording the submission of the parties that the case is stayed, without getting a copy of the order or an affidavit from the parties. If an order is produced by the parties in which the stay is extended until further orders, the courts should insist an affidavit from the parties once in three months stating that the order is in force. Therefore, all the



courts in the District Judiciary and courts/tribunals/quasi judicial forums under the supervision of this Court should adhere to the following directions in future:

- (i) If any submission is made before a court/tribunal stating that an interim order/stay is passed by the High Court, but the stay order is not produced, the courts/tribunals concerned should ask the parties to file an affidavit to that effect and then only the case needs to be adjourned.
- (ii) If there is already a stay and the case number is also furnished by the parties, the courts/tribunals can direct the office to verify the case status from the High Court website to find out whether the stay is extended or is in force, if there is any submission that the stay is extended and is



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in force. At that stage also, the courts/tribunals can insist for an affidavit from the parties, if the stay extension order is not produced. A reasonable time can be given to the parties to produce the stay order or stay extension order (maximum one month).

(iii) If no stay order or affidavit is produced stating that the stay is in force, the courts/tribunal concerned shall proceed with the case in accordance with the law after verifying the case status on the High Court website.

(iv) If an order is produced by the parties in which the stay is extended until further orders by the High Court, the courts/tribunals should insist an affidavit from the parties once in three months



thereafter, stating that the order is in force.

(v) If any case is adjourned by the courts/tribunals recording that the matter is stayed without getting the stay order/stay extension order/ affidavit of the parties stating that the matter is stayed or stay is extended, this Court will take it as very serious.

(vi) If a new presiding officer took charge in a court/tribunal, a mechanical order stating that the matter is stayed should be avoided in future. The new presiding officer concerned should follow the above directions strictly and insist for a copy of the stay/ stay extension order/ affidavit from the parties stating that the matter is stayed.

(vii) All courts of the District Judiciary should



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see that the proceedings of the courts are recorded in the Case Information System (CIS)/Case Management System (CMS) properly and the non mentioning of the case details in the CIS/CMS will be taken seriously by this Court.

8. The Registrar, District Judiciary will issue strict directions in tune with the above directions to all Principal District Judges of the State including tribunals and other judicial forum under the supervision of this Court along with a copy of this order. The Principal District Judge will forward a copy of this order to all the courts in his jurisdiction for strict compliance.

9. Coming back to the facts of this case, this Crl.M.C is filed to quash Annexure II final report. The offence alleged against the petitioners in the final



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report are under section 420 r/w 34 IPC. I am of the considered opinion that the petitioners should approach the trial court with a discharge petition in the facts and circumstance of this case mentioned above. The counsel appearing for the petitioners submitted that, in a similar set of facts, this Court quashed the proceedings as per the order dated 05.11.2019 in Crl.M.C. No. 5773/2017. The petitioners can raise that contention also before the trial court by filing a discharge petition.

Therefore, this Criminal Miscellaneous Case is disposed of in the following manner:

1. The petitioner is 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 the charge is not framed.



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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 petitioner 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 petitioner shall not be insisted, till final orders are passed in the discharge petition, if the petitioner appeared and obtained bail.
4. All the contentions raised by the petitioner in this criminal



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miscellaneous case are left open
and the petitioner is free to agitate
the same in the discharge petition.

5. The Registrar, District Judiciary will
do the needful as directed by this
Court in Paragraph No.8.

Sd/-

**P.V.KUNHIKRISHNAN
JUDGE**

DM



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APPENDIX OF CRL.MC 5706/2017

PETITIONER ANNEXURES

- ANNEXURE I CERTIFIED COPY OF THE F.I.R IN CRIME
NO.54/2017 DATED 13.01.2017 OF
THRISSUR WEST POLICE STATION.
- ANNEXURE II CERTIFIED COPY OF THE CHARGE-SHEET
IN C.C.87/2017 DATED 18.04.2017 OF
THE C.J.M. COURT-THRISSUR.
- ANNEXURE III TRUE COPY OF THE AGREEMENT DATED
08.09.2016 ENTERED BETWEEN THE 1ST
PETITIONER AND THE 2ND RESPONDENT.
- ANNEXURE IV TRUE COPY OF THE RECEIPT DATED
27.10.2016 ISSUED BY THE PANCHAYAT
TO THE 2ND RESPONDENT.
- ANNEXURE V TRUE COPY OF THE ORDER DATED
18.05.2017 IN I.A.NO.325/17 IN
C.C.NO.92/2017 PASSED BY THE
CONSUMER DISPUTES REDRESSAL FORUM,
THRISSUR.

RESPONDENTS EXHIBITS: NIL

//TRUE COPY//

PA TO JUDGE