

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.NAVANITI PRASAD SINGH

THURSDAY, THE 26TH DAY OF OCTOBER 2017/4TH KARTHIKA, 1939

CrI.MC.No. 9125 of 2016

-----  
AGAINST THE ORDER IN MC No.1/2008 IN st No.5/2008 OF THE JFMC-II,  
PERUMBAVOOR DATED 03/08/2016  
.....

PETITIONER/COUNTER PETITIONER :  
-----

ASSAINAR, AGED 50 YEARS,  
S/O.ALIYAR, KURUPPALI VEEDU,  
EDATHALA, ALUVA EAST, ERNAKULAM DISTRICT.

BY ADV. SRI.K.SUNILKUMAR

RESPONDENT/COMPLAINANT :  
-----

STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR, SRI.C.S. HRITHWIK (SR.)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
26-10-2017, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :  
-----

ANNX.A1 - TRUE COPY OF THE ORDER DATED 18/09/2008 IN MC No.1/2008 IN ST No.5/2008 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-11, PERUMBAVOOR.

ANNX.A2 - TRUE COPY OF THE ORDER DATED 24/12/2008 IN ST No.5/2008 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, PERUMBAVOOR.

ANNX.A1 - TRUE COPY OF THE ORDER DATED 03/08/2016 IN MC No.1/2008 IN ST No.5/2008 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, PERUMBAVOOR.

RESPONDENTS' EXHIBITS :  
-----

NIL

/TRUE COPY/

PS TO JUDGE

**Navaniti Prasad Singh, C.J.**

-----  
Crl. M.C. No. 9125 of 2016  
-----

Dated this the 26<sup>th</sup> day of October, 2017

**O R D E R**

For an offence under Section 138 of the Negotiable Instruments Act, 1881, the petitioner stood surety in respect of a bond produced by the accused person for his appearance before the Magistrate of Perumbavoor.

2. It appears that the accused person then absconded and sureties were called upon to produce him and on failure, to deposit the bond of Rs.20,000/- as undertaken by them. These proceedings were shielded by the Magistrate on the ground that one of the sureties i.e., the petitioner could not be found and the other did not turn up. The proceedings remained in the files. In the mean time, the accused person, appeared and the matter was compromised and settled as between the accused and the complainant with the permission of the Court and as such, the complaint proceedings were closed by order dated 24.12.2008 of the Magistrate. Thereafter, the present Miscellaneous Case was resurrected by the Magistrate and distress warrant has been issued as against the petitioner.

3. It is submitted and rightly so that in a situation in which the main case itself has been closed and earlier no summons had been validly served on the petitioner to produce the accused person, the distress warrant against the petitioner as a surety could not have been issued. Learned Public Prosecutor is not able to show any provision wherein once the case is closed upon settlement between the complainant and accused and the surety still be asked to produce the accused and on failure be penalised. In my view, in the facts and circumstances of the case, the entire action of the Magistrate was without application of mind, rather mechanically.

In the above facts and circumstances of the case, the application is allowed and the proceedings, being M.C. No.1/2008 in S.T. No.5/2008, as pending in the Court of Judicial First Class Magistrate-II, Perumbavoor, is set aside.

Sd/-  
**Navaniti Prasad Singh,**  
**Chief Justice.**

ttb/26/10