

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 5<sup>TH</sup> DAY OF JULY 2024 / 14TH ASHADHA, 1946

CRL.MC NO. 4037 OF 2024

CRIME NO.705/2014 OF Cheranelloor Police Station, Ernakulam  
AGAINST THE ORDER/JUDGMENT DATED IN CC NO.560 OF 2018 OF JUDICIAL  
MAGISTRATE OF FIRST CLASS - IX, ERNAKULAM

PETITIONERS:

- 1      THOMAS V.D  
         AGED 56 YEARS  
         S/O DEVASSY,  
         VYMELIL HOUSE,  
         SOUTH CHITTOOR P.O.,  
         ERNAKULAM, PIN - 682027
- 2      T.K. GOPI  
         AGED 77 YEARS  
         S/O KRISHNAN,  
         THYVELIKKAKATH HOUSE,  
         SOUTH CHITTOOR P.O.,  
         ERNAKULAM, PIN - 682027
- 3      T.K. SUDHAKARAN  
         AGED 69 YEARS  
         S/O KRISHNAN,  
         THYVELIKKAKATH HOUSE,  
         SOUTH CHITTOOR P.O.,  
         ERNAKULAM, PIN - 682027
- 4      P.J GEORGE  
         AGED 69 YEARS  
         S/O JOSEPH,  
         PALLIKKAVEETIL HOUSE,  
         SOUTHCHITTOOR P.O.,  
         ERNAKULAM, PIN - 682027  
         BY ADVS.  
         P.MOHAMED SABAH  
         LIBIN STANLEY  
         SAIPOOJA  
         SADIK ISMAYIL  
         R.GAYATHRI  
         M.MAHIN HAMZA  
         RAYEES P.  
         ALWIN JOSEPH  
         BENSON AMBROSE

**RESPONDENTS:**

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA,  
ERNAKULAM, PIN - 682031
- 2 STATION HOUSE OFFICER  
CHERANELLOOR POLICE STATION,  
ERNAKULAM DISTRICT,, PIN - 682034

**OTHER PRESENT:**

SRI. NOUSHAD K. A. (PP)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD  
ON 05.07.2024, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

**BECHU KURIAN THOMAS, J.**

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**Crl.M.C. No. 4037 of 2024**  
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**Dated this the 5<sup>th</sup> day of July, 2024**

**ORDER**

Petitioners are the accused in C.C.No. 560 of 2018 on the files of the Judicial First Class Magistrate's Court-IX, Ernakulam. They are facing prosecution for the offences under Sections 353 and 294(b) r/w Section 34 of the Indian Penal Code, 1860.

2. By order dated 27-01-2022, petitioners were granted permanent exemption from appearance on condition that their counsel shall appear on every posting date representing them and no adjournment shall be sought for on their behalf. However, on 30-04-2024, when the Investigating Officer was scheduled to be examined, the defense counsel was absent, and rejecting the request of the counsel representing the accused, the learned Magistrate cancelled the bail bond and issued a warrant of arrest to the petitioners. The said order is under challenge in this petition under Section 482 of Cr.P.C.

3. I have heard Adv.Saipooja, the learned counsel for the petitioners, as well as Sri.Noushad K.A., the learned Public Prosecutor.

4. Petitioners were granted personal exemption on specific conditions. One of the conditions stipulated that the accused shall not seek adjournment and that their counsel shall be present on all posting dates. However, contrary to the said condition, the defense counsel was not present on the date posted for the examination of the Investigating Officer though he was represented by another counsel, and requested for an adjournment.

5. Taking into consideration the aforesaid circumstances, I am of the view that the cancellation of the bail bond and the issue of warrant to the petitioners was too harsh a step, as the defense counsel was represented through another counsel. It was not a case where there was no representation at all on behalf of the accused. Taking into consideration the circumstances that the investigating Officer appeared after repeated summons and pursuant to a warrant issued by the court, I am of the view that the impugned order is liable to be interfered with, on terms.

6. Accordingly, Annexure-3 order dated 30-04-2024 cancelling the bail bond of the petitioners and issuing non-bailable warrant is set aside on payment of a cost of Rs.1000/- each to the District Legal Service Authority, Ernakulam. The learned Magistrate shall schedule the case and proceed with the trial on payment of the costs as directed above.

Sd/ -

**BECHU KURIAN THOMAS**  
**JUDGE**

AJM

APPENDIX OF CRL.MC 4037/2024

**PETITIONER ANNEXURES**

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| <b>Annexure 1</b> | <b>TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO: 705/2014 OF CHERANELLORE POLICE STATION, ERNAKULAM</b>   |
| <b>Annexure 2</b> | <b>TRUE COPY OF THE ORDER DATED 27.01.2022 IN C.M.P NO. 2593/2021 PASSED BY THE HONOURABLE JUDICIAL FIRST CLASS MAGISTRATE COURT-IX, ERNAKULAM</b>                                 |
| <b>Annexure 3</b> | <b>TRUE COPY OF THE SCREEN SHOT OF E-COURT PROCEEDINGS DATED 30.04.2024 IN C.C. NO. 560/2018 ON THE FILE OF THE HONOURABLE JUDICIAL FIRST CLASS MAGISTRATE COURT-IX, ERNAKULAM</b> |
| <b>Annexure 4</b> | <b>TRUE COPY OF THE ORDER DATED 29.06.2018 IN CRL.M.C. NO. 4162/20218 PASSED BY THIS HONOURABLE COURT</b>  |
| <b>Annexure 5</b> | <b>CERTIFIED COPY OF THE PROCEEDINGS OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-IX, ERNAKULAM DATED 30.04.2024</b>   |