

"CR"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

FRIDAY, THE 09TH DAY OF APRIL 2021 / 19TH CHAITHRA, 1943

CrI.MC.No.1658 OF 2021(F)

AGAINST THE ORDER/JUDGMENT IN CC 134/2021 OF ADDITIONAL CHIEF
JUDICIAL MAGISTRATE , ERNAKULAM

PETITIONER/S:

ANOOP JACOB
AGED 42 YEARS
S/O.LATE T.M.JACOB, THANIKUNNEL, OLIYAPURAM,
KOOTHATTUKULAM.

BY ADV. SRI.MANOJ P.KUNJACHAN

RESPONDENT/S:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN-682 031.

OTHER PRESENT:

PP T.R.RENJITH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
09.04.2021, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

'C.R'

V.G.ARUN, J.**-----
CrI.M.C.No.1658 of 2021
-----****Dated this the 9th day of April, 2021****O R D E R**

The petitioner is the 1st accused in C.C.No.134 of 2021 on the files of the Additional Chief Judicial Magistrate (Special Court for Cases related to MPs/MLAs), Ernakulam. The offences alleged are under Sections 143, 147, 149, 269, 271 and 188 of IPC, Section 118(e) of the Kerala Police Act and Sections 4(2)(a), 4(2)(e) and 5 of the Kerala Epidemic Disease Ordinance, 2020. The CrI.M.C is filed aggrieved by the non-bailable warrant issued against the petitioner. The specific case put forth by the petitioner is that the summons, alleged to have been sent through WhatsApp to his mobile phone, had never reached him, as he has not downloaded the WhatsApp application on his phone.

2. In view of the contentions, it may be apposite to have a look at Section 62 of Cr.P.C, dealing with mode of service of summons;

“62. Summons how served.

(1) Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant.

(2) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

(3) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate."

3. Going by Section 65 of Cr.P.C, if service could not be effected as provided under Section 62, the serving officer shall affix one of the duplicates of the summons to the conspicuous part of the house or homestead in which the person summoned ordinarily resides. Thereafter, the court should make such enquiries as it thinks fit and either declare the summons to have been duly served or order fresh service in such manner as it considers proper. As per Rule 7 of the Criminal Rules of Practice, Kerala, summons issued to the accused and witnesses shall ordinarily be signed by the Chief Ministerial Officer of the Court and the words "By order of the Court" shall invariably be prefixed to the signature of the Ministerial Officer.

4. The above provisions do not provide for service of summons through WhatsApp. No doubt, the revolutionary changes in the field of communication calls for a more pragmatic approach regarding the mode and manner of service of summons. In this regard, it may be pertinent to note the insertion of Section 144 in the Negotiable Instruments Act (for short, 'the Act') for the purpose of overcoming the delay in serving summons on the accused in complaints under Section 138 of the Act. Section 144, providing for service of summons by speed post or by approved courier service, was inserted by Act 55 of 2002. In ***Indian Banks Assn. v. Union of India*** [(2014) 5 SCC 590],

the Honourable Supreme Court alerted the Magistrates about the need to adopt a pragmatic and realistic approach while issuing process and had directed to issue summons by post as well as by email. Later, in ***Meters & Instruments (P) Ltd. v. Kanchan Mehta*** [(2018) 1 SCC 560], the Apex Court observed that in complaints under Section 138, it may be desirable for the complainant to give his bank account number and if possible, the email ID of the accused. Recently, in ***Makwana Mangaldas Tulsidas V. State of Gujarat*** [(2020) 4 SCC 695], it has been held that the Banks are bound to provide the requisite details by developing an information sharing mechanism, where the Banks can share all the requisite available details of the accused, who is the account holder, with the complainant and the Police for the purpose of execution of process.

6. In the case at hand, the summons is stated to have been issued through WhatsApp, which is not an accepted mode of service. As such, the court should not have issued non-bailable warrant against the petitioner on the assumption that he had failed to appear after receiving the summons.

In the result, the Crl.M.C is disposed of permitting the petitioner to appear before the Additional Chief Judicial Magistrate's Court (Special Court for Cases related to MPs/MLAs), Ernakulam in C.C.No.134 of 2021 and to move an application for bail. In such event, the bail application shall be considered on the same day, deeming

the petitioner to have appeared on summons. In order to provide an opportunity for the petitioner to appear before the court below and seek bail, the non-bailable warrant issued against him shall be kept in abeyance for a period of four weeks.

sd/-

V.G.ARUN, JUDGE

vgs

APPENDIX

PETITIONER'S/S EXHIBITS:

- | | |
|------------|---|
| ANNEXURE 1 | A TYPE WRITTEN COPY OF THE PROCEEDINGS
REGARDING CASE NUMBER CC/134/2021 DATED
15.03.2021. |
| ANNEXURE 2 | A TRUE COPY OF THE PROCEEDINGS MAINTAINED
IN THE E-COURT SERVICES REGARDING CASE
NUMBER CC/134/2021 DATED 15.03.2021. |