



2023/KER/68211

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 3RD DAY OF NOVEMBER 2023 / 12TH KARTHIKA, 1945

CRL.MC NO. 9209 OF 2023

CRIME NO.877/2017 OF Alathur Police Station, Palakkad
AGAINST THE ORDER IN SC 474/2018 OF ADDITIONAL SESSIONS
COURT (ADHOC-II), PALAKKAD

PETITIONERS/PETITIONERS/ACCUSED NOS.4,6,7 & 10:

1 VISHNU, AGED 26 YEARS

[REDACTED]

2 VIVEKANANDAN @ VIVEK

[REDACTED]

3 SUNEESH @ SUNI

[REDACTED]

4 ARUN, AGED 27 YEARS

[REDACTED]

BY ADV V.A.JOHNSON (VARIKKAPPALLIL)

RESPONDENT/RESPONDENT AND COMPLAINANT:

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

OTHER PRESENT:

SMT SREEJA V, PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
03.11.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**‘CR’****P. V. KUNHIKRISHNAN, J.****Crl.M.C.No.9209 of 2023****Dated this the 3rd day of November, 2023****ORDER**

This Criminal Miscellaneous Case is filed challenging Annexure-2 order, by which, an application filed by the petitioners/accused to reschedule S.C.No.474/2018 of the Additional Sessions Court (Adhoc-II), Palakkad was dismissed by the learned Sessions Judge.

2. The learned Sessions Judge dismissed the application stating that, this Court in Official Memorandum no.HCKL/1701/2023-E6(B) dated 07.08.2023 directed to dispose all murder cases immediately. That does not mean that the convenience of the lawyers need not be looked into by the trial court. These are fundamental things to be considered by the trial court at the time when the case is posted for trial. The intention of this Court is only to see that the old murder cases are to be disposed of immediately. When a lawyer coming before the court saying that he is already engaged in some other sessions case and he is ready to conduct the



trial on a particular date, the Court should hear that submission in a pragmatic manner. Rule 77A(2) of the Criminal Rules of Practice, Kerala, 1982 says that, after the commencement and immediately after framing the charge, the Court shall hear the prosecution and the accused to ascertain and fix consecutive dates for recording evidence. This shows that the prosecution and the accused are having a role while fixing the date of trial. There cannot be a unilateral decision from the Court alone while scheduling trial. Accused has got a right to choose his lawyer for conducting the trial and hence the convenience of the lawyer also should be taken care of by the Court. But, the submission of the lawyer should be genuine. Whether the submission of a lawyer for getting a date for trial is genuine or not is to be decided by the Court at the stage of scheduling the trial. If the submission of the lawyer of the accused or prosecution is genuine, the Court should be magnanimous to accept it and schedule the trial as requested by them after considering the convenience of the Court also. In this case, the submission of the counsel is genuine. Hence, I am of the considered opinion that the impugned order can be set aside and there can be a direction to the learned Judge to reconsider the matter in accordance to law.



Therefore this Crl.M.C is disposed of with the following directions:

- a) Annexure-2 Order is set aside.
- b) The Additional Sessions Court-II, Palakkad is directed to reconsider Crl.M.P.No.4928/2023 in S.C.No.474/2018 in accordance to law.

Sd/-

P. V. KUNHIKRISHNAN
JUDGE

Sbna/



APPENDIX OF CRL.MC 9209/2023

PETITIONER ANNEXURES

- Annexure 1 TRUE COPY OF THE CRL.M.P.NO.4928/ 2023
IN S.C.NO.474/2018 OF THE COURT OF
ADDITIONAL SESSIONS JUDGE-II, PALAKKAD
DATED 18.10.2023
- Annexure 2 FREE COPY OF THE ORDER IN
CRL.M.P.NO.4928/ 2023 IN S.C.NO.474/2018
OF THE COURT OF ADDITIONAL SESSIONS
JUDGE-II, PALAKKAD DATED 18.10.2023