



2026:KER:31483

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 8<sup>TH</sup> DAY OF APRIL 2026 / 18TH CHAITHRA, 1948

CRL.MC NO. 6283 OF 2021

ARISING OUT OF THE ORDER DATED 17.11.2021 IN CR.R.P.  
NO.19/2020 OF ADDITIONAL DISTRICT & SESSIONS COURT - VI,  
THIRUVANANTHAPURAM

ORDER DATED 29.02.2020 IN CC NO.1/2020 OF CHIEF  
JUDICIAL MAGISTRATE COURT, THIRUVANANTHAPURAM

PETITIONER/REVISION PETITIONER/COMPLAINANT:

ALOYSIOUS FERNANDEZ DICKSON  
AGED 48 YEARS  
S/O.ALOYSIOUS FERNANDEZ, PALM VILLA,  
ATTINKUZHY, KAZHAKKUTTOM P.O.,  
THIRUVANANTHAPURAM-695 582

BY ADVS.  
SRI.T.M.CHANDRAN  
SRI.R.ARUN

RESPONDENTS/REVISION COUNTER PETITIONERS/ACCUSED:

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM
  
- 2 REGHUNATH  
AGED 52 YEARS  
MANAGER, NASHE TOURS & TRAVELS PVT LTD.,  
DEVAKI GOPAL, SMRUTHI BUILDING, TEMPLE ROAD,  
SASTHAMANGALAM, THIRUVANANTHAPURAM

BY ADV.SRI.SANAL P.RAJ, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
08.04.2026, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



**C.R.**

**ORDER**

*Dated this the 08th day of April, 2026*

This Crl.M.C. challenges the dismissal of a complaint filed by the petitioner for failure to take out steps for the issuance of a summons to the accused. The major premise of the contention of the petitioner is that the discretion vested with the Magistrate under Section 204 (4) of the Code of Criminal Procedure requires such power to be exercised judiciously and with due circumspection, and a mechanical dismissal on the very first posting date is not envisaged in law.

2. The relevant facts disclosed in the Crl.M.C. are as follows: Annexure A1 complaint was filed by the petitioner alleging that the 2nd respondent, after receiving an amount of Rs.1,80,000/- from him towards arranging a tour to Japan, had cheated him by not returning the amount when the tour did not materialise. The complaint was forwarded by the learned CJM to the Museum Police Station for investigation. A refer report was filed by the police, to which the petitioner filed a protest complaint. The learned CJM took



cognizance of the offence and ordered the issuance of summons to the accused. However, on 29.02.2020, which happened to be the very first posting date after the order for issuance of summons, the learned CJM dismissed the complaint, vide Annexure 2 order holding as follows:

*“Complainant absent, no representation. No steps taken.  
Complaint dismissed u/s 204(4) of CrPC.”*

3. The above order was challenged by the petitioner before the Additional Sessions Judge VI, Thiruvananthapuram, by filing Crl.R.P.No.19 of 2020. However, the said revision petition was dismissed by the Sessions Court vide Annexure A4 order holding that no reason for interference had been made out. Thus aggrieved by Annexures A4 and A2 orders, this Crl.M.C. is filed.

4. Heard Sri.T.M.Chandran, Advocate for the petitioner and Sri.Sanal P.Raj, the learned Public Prosecutor.

5. The learned counsel for the petitioner submitted that his client was diligent in prosecuting the case right from the institution of the complaint and that he had been vigilant enough to file a protest complaint upon filing of the refer report by the police. After recording



the sworn statement of the petitioner and a witness, for which there were different postings on various dates, on which dates the complainant punctually appeared before the court and an order for the issuance of summons had been issued. Thereafter, on 29.02.2020, i.e., the first posting date after issuance of the order of summons, when the case was called out for consideration, there was no representation on behalf of the petitioner/complainant and no steps for issuance of summons had been taken. This, according to the learned counsel, happened solely because the clerk of the complainant's counsel had erroneously noted the posting date as 29.04.2020 instead of 29.02.2020.

6. It is the contention of Sri.Chandran that the learned CJM erred in rendering Annexure A2 order dismissing the complaint, invoking Section 204(4) of the Code of Criminal Procedure, for not taking steps to issue summons. The learned counsel further contended that the order of dismissal impugned was cryptic and devoid of reasons, and that, as the power under Section 204(4) of the CrI.P.C. is discretionary in nature, it was incumbent upon the learned Magistrate to elaborate on the reasons for the exercise of



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such discretion, especially when it detrimentally affects the complainant. Judicious exercise of the power under Section 204 (4) is thus mandatory, and cryptic and unreasoned one-line orders like the one in the case at hand are abhorrent. The dismissal of the complaint mechanically on the first posting date, itself without giving an adequate opportunity to explain the reason for the non-issuance of notice, is erroneous and illegal. Since Annexure A2 order issued by the learned CJM does not reveal a proper application of mind regarding the exercise of discretion while invoking powers under Section 204(4) of the Cr.P.C., the same is fit to be set aside.

7. It is further submitted by the learned counsel that the Sessions Court also erred in dismissing the revision challenging the order of the Magistrate. The said order in revision was also rendered without proper application of mind. It is submitted that an erroneous reliance had been placed by the learned Sessions Judge on the judgment in **Ayodya Printers Ltd., Ernakulam v. State of Kerala and another** [2015 (4) KHC 897] without a full appreciation of the dictum laid down therein. This Court had in **Ayodya** (supra), while affirming the powers of the Magistrate under Section 204 (4) of the



Cr.P.C., held that before invoking the power of dismissal of a complaint, it had to be appreciated as to whether there was a failure to pay the process fee within a reasonable time. The said aspect was overlooked by the learned Sessions Judge. Reliance is also placed by the learned counsel on the dictum laid down in **Prabhakaran v. Muhammedali** (Crl.R.P.No.361 of 2016) to buttress his contentions.

8. Per contra, the learned Public Prosecutor vehemently opposed the contentions put forth on behalf of the petitioner and submitted that the impugned orders are validly rendered and do not merit any interference. It is contended that the complainant was fully aware of the procedural requirement to take steps for the issuance of a summons and, having admittedly failed to do so on the date fixed by the learned Magistrate, cannot be seen to raise the contentions now put forth. The learned Public Prosecutor adds that the posting of the case for the return of summons on a specified date itself implies that the petitioner/complainant was expected to take necessary steps within the time granted, and failure to take steps before the relevant date for appearance clearly demonstrates



a lack of due diligence and apathy on the part of the petitioner/complainant justifying exercise of the discretion under Section 204 (4) of the Cr.P.C. against him.

9. I have considered the contentions put forth by both sides. Section 204 (4) of the Cr.P.C., which is invoked by the learned CJM to render Annexure A2 order reads as follows:

*"When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint."*

10. In the case at hand, the matter was posted for return of summons on 29.02.2020. It was the very first posting for the said purpose. Admittedly, the petitioner had been pursuing the matter, and he, along with the witness, had been present before the court on various days of postings for recording sworn statements. It is after such recording of evidence that an order for the issuance of a summons was rendered. Thereafter, on the next day of posting for the return of summons, the petitioner was absent. He had offered an explanation for his absence: a mix-up of dates at his counsel's office. In this scenario, the question to be considered is whether the



above-reproduced order of the Magistrate in the facts and circumstances of the case meets the mandates of Section 204(4) Cr.P.C.

11. Indeed, Section 204 (4) Cr.P.C. empowers a Magistrate to dismiss a complaint when the process fees or other fees payable are not paid within a reasonable time. However, as rightly contended by the learned counsel for the petitioner, based on the dictum laid down in **Ayodya** (supra), before invoking the power of dismissal of a complaint under Section 204 (4), the Magistrate has to apply his mind to determine whether there was a wilful or deliberate failure to pay the process fee within a reasonable time. This Court in **Prabhakaran's** case (supra) has held that although the use of the word “*may*” in Section 204 (4) confers discretion upon the Magistrate, such discretion is required to be exercised judiciously, reasonably, and in accordance with settled principles of law, and not mechanically or arbitrarily. It was also held therein that it is appropriate to grant a reasonable opportunity to the petitioner to prosecute the matter in the trial court with diligence.

12. It follows from the above that the dismissal of a



complaint for non-payment of the process fee invoking Section 204 (4) is not a routine or mechanical process. The provision does not envisage it to be so at all. The words 'reasonable time', as used in Section 204 (4), mandates that the Magistrate shall, before proceedings to dismiss for non-remittance of process, ascertain whether there was a failure to remit the process within a reasonable time. What is reasonable would depend on the facts and circumstances of each case, thus giving sufficient leeway for the Magistrate to suit the time period to the fact situation of the matter at hand. Similarly, the word 'may' as used in the provision further facilitates the Magistrate to test the reasonableness and conveys that the provision does not impose a strict regimen leading to dismissal and dismissal alone. Even if the time period exceeds what may be legally termed as reasonable, the learned Magistrate still has the option to weigh in the circumstances so as to ensure that justice is done and a complaint is not thrown out for a mere procedural non-compliance.

13. The cumulative effect of the words of Section 204(4) is that any order invoking the power of dismissal under the said



Section must be a speaking order which would reveal that the learned Magistrate had applied his mind and exercised the mandate of the provision to ascertain the gravity of the failure to remit the process in a reasonable period, and if circumstances exist pointing to the need for dismissing the matter on the said count, the same should be elaborated and explained sufficiently. The application of mind by the learned Magistrate should thus be borne out from the order dismissing the complaint invoking Section 204 (4). Any order that is cryptic and insufficient when it comes to meeting the above mandates cannot be termed as one that meets the object and intend of the provision.

14. Examined from the above legal prism, the order dated 29.02.2020 of the learned Magistrate cannot be termed as valid or legal. The learned Sessions Judge too, while issuing Annexure A4 order dismissing the revision, failed to properly appreciate the scope of the provision.

15. The order of dismissal of the criminal complaint by the Magistrate on the first posting date for the reason that the process had not been paid, without a proper explanation of the reason for



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such decision, is anathema to the requirement of reasonableness which is embedded within Section 204 (4) Cr.P.C.

In view of the above, the impugned orders are unsustainable in law and are set aside. CrI.M.C. is allowed. The complaint is resurrected back to file, and the learned Magistrate shall dispose of the same in accordance with the law.

Sd/-

**SYAM KUMAR V.M.  
JUDGE**

csi



APPENDIX OF CRL.MC NO. 6283 OF 2021

**PETITIONER ANNEXURES**

- Annexure A1** THE TRUE COPY OF THE COMPLAINT FILED BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, THIRUVANANTHAPURAM
- Annexure A2** THE TRUE COPY OF THE ORDER DATED 29.09.2020 IN CC NO.1 OF 2020 ON THE FILE OF THE CHIEF JUDICIAL MAGISTRATE COURT, THIRUVANANTHAPURAM
- Annexure A3** THE TRUE COPY OF THE REVISION PETITION FILED BEFORE THE HON'BLE ADDITIONAL SESSIONS JUDGE VI, THIRUVANANTHAPURAM WHICH WAS NUMBERED AS CRL RP NO.19/2020
- Annexure A4** THE TRUE COPY OF THE ORDER DATED 17.11.2021 IN CRL R.P.NO.19/2020 OF HON'BLE ADDITIONAL SESSIONS JUDGE IV, THIRUVANANTHAPURAM