



2023/KER/58630

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 3RD DAY OF OCTOBER 2023 / 11TH ASWINA, 1945

CRL.MC NO. 1609 OF 2018

CC 279/2004 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-VI,

KOZHIKODE

PETITIONER/S:

SUO MOTU

RESPONDENT/S:

STATE OF KERALA

OTHER PRESENT:

PP P.S.APPU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 25.01.2023, THE COURT ON 03.10.2023 PASSED THE
FOLLOWING:



ORDER

Dated this the 03rd day of October, 2023

This *suo motu* proceedings was initiated to resolve the deadlock in C.C.No.368 of 2009 on the files of the Chief Judicial Magistrate's Court, Kozhikode, consequent upon the missing of the material objects seized in Crime No.66 of 2000 of Kasaba Police Station, Kozhikode, and produced in Court. The essential facts are as under;

Crime No.66 of 2000 was registered at the Kasaba Police Station against ten persons alleging commission of offences under Sections 467, 468, 471, 120-B and 420 r/w 34 of IPC. The prosecution allegation is that the accused, in furtherance of their common intention, created false documents and articles like stamp paper, official seals etc; for the purpose of forging documents and using the same in order to obtain



unlawful financial gain by deceitful and fraudulent means. During the course of investigation, a large number of articles were seized from the possession of the accused and produced in court under three separate lists. These material objects were received and entered in the Property Register (PR No.19/00) of the court. Later, some of those properties were forwarded to the Judicial First Class Magistrate Court-VI, Kozhikode, for the purpose of conducting the trial in C.C.No.279 of 2004 of that court. Thereafter, the trial in C.C.No.279 of 2004 was conducted and the case disposed of by judgment dated 03.01.2006. The investigation in Crime No.66 of 2000 was completed thereafter and the final report filed before the CJM Court on 23.10.2009. Thereupon, cognizance of the offences was taken and the case numbered as C.C.No.368 of 2009. For the purpose of conducting trial in C.C.No.368 of 2009, the properties forwarded to



the court of the JFCM-VI, Kozhikode were recalled. It was then informed that some of the properties were missing from that court and could not be traced out despite strenuous efforts. Subsequently, departmental proceedings were initiated against the persons responsible for the safe keeping of the properties and punishment was imposed on one staff member. Even though the missing articles are of relevance in the evidence to be adduced by the prosecution and it may impact the prosecution case itself, insofar as the articles are irrecoverably lost and cannot be reconstructed, the learned Chief Judicial Magistrate addressed this court seeking permission to proceed with the trial in C.C.No.368 of 2009 with the available materials.

2. Apart from the question whether permission for proceeding with the trial of C.C.No.368 of 2009 with the available materials can be granted, the more pressing requirement is as to avoid such



situations in future.

3. As of now, Rule 184 of the Criminal Rules of Practice prescribes the manner in which Property Registers are to be maintained in courts. For convenience and ease of reference, Rule 184 is extracted hereunder;

"184. Maintenance of property register.- (1) The entries in the property register (Administrative Form No. 23) shall be made by the person who is in charge of the articles.

(2) Each material object should have attached or affixed to it a label to show the number of the case to which it relates and the party from whom it has been received or recovered. The label should also bear the number of the item in the property register. The label shall be in the following form, namely:-

(i) Property Register No, and Year:

(ii) Case No.:

(iii) Name of person from whom received:

(iv) Address:

(3) The properties shall be entered in the



register in the order in which they are received, assigning a separate number to each item. The register shall be renewed every year and the undisposed of items in the previous year shall be carried forward under the same number. Whenever the register is renewed, a certificate should be entered after the last entry in the old register and also in the opening page of the new register that all the pending items have been carried over in the new register.

(4) Non-valuables shall be entrusted with the property clerk or any other clerk authorised for the purpose. Valuables shall be entrusted to the Head Clerk in Sessions Courts and Courts of Chief Judicial Magistrates and the Chief Ministerial Officer in other Subordinate Courts.

(5) The entries shall be countersigned by the Chief Ministerial Officer or the Sheristadar in cases where the entries are not made by them. The Presiding Officer shall also countersign the entries."

No doubt, the provision contains sufficient safeguards with respect to the properties produced in court. The corresponding administrative forms, namely, Form Nos.23, 23A,



23B and 24 also have provision for entering the relevant data. Moreover, as per O.M No.D2-26543/95 dated 19.12.1995, the High Court has directed all Subordinate Judicial Officers to follow the instructions regarding maintenance of the register of property in Form No.23 of Criminal Rules of Practice and also to see that whenever there is a change of the Clerk in charge of the register, the new clerk physically verifies and takes charge of all items of property. Further, the Junior Superintendent of the Court is bound to conduct a quarterly physical verification and submit a certificate to the Magistrate concerned. Now, the question arising for consideration is whether Rule 184 and the ancillary forms, introduced in the year 1982, are in tune with the present scenario. The answer can only be in the negative, considering the technological advancements in the past ten years like the introduction of e-filing and



digitization of records. In my opinion, Rule 184 ought to be amended and provision should also made for digitizing the registers and records, in consonance with the recent developments. Digitization of the registers and introduction of electronic tracking system will help in preventing the stalemate of cases due to the missing, pilferage or damage of properties produced in court. I am expressing this opinion, being conscious of the fact that the case at hand is not an isolated instance of the missing of properties produced in court.

4. While on the subject, it is also relevant to note that the Criminal Rules of Practice does not prescribe the procedure to be followed while transferring the properties received and entered in the Property Register of one court to another court and for ensuring that all such properties are returned by the transferee court. The above lacuna should be



brought to the notice of the Rules Committee of the High Court, so that appropriate amendment can be suggested and incorporated in the Criminal Rules of Practice.

As it is reported that some of the items forwarded to the JFCM-VI, Kozhikode are irrecoverably lost, the trial in C.C.No.368 of 2009 of the Chief Judicial Magistrate's Court, Kozhikode will have to proceed with the available materials. Necessary steps in that regard shall be taken on receipt of the copy of this order.

The Crl.M.C is disposed of accordingly.

The Registry shall make available a copy of this order to the Rules Committee, through its Secretary.

Sd/-

V . G . ARUN
JUDGE

Scl/