

**Philip Vs. the State of Kerala**

**Philip Vs. the State of Kerala**

**SooperKanoon Citation :** [sooperkanoon.com/1163515](http://sooperkanoon.com/1163515)

**Court :** Kerala

**Decided On :** Aug-27-2014

**Judge :** Honourable Mr. Justice K.Ramakrishnan

**Appellant :** Philip

**Respondent :** The State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN WEDNESDAY, THE 27TH DAY OF AUGUST 2014 5TH BHADRA, 1936 CrI.MC.No. 4881 of 2014 ----- LP12012 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KOTHAMANGALAM CRIME NO. 89/2006 OF OONNUKAL POLICE STATION , ERNAKULAM ----- PETITIONER(S)/2ND ACCUSED: ----- PHILIP, AGED 38 YEARS, S/O.ABRAHAM, KALLUMATTATHIL VEEDU, NEAR FOREST RANGE OFFICE, KOOMBANPARA KARA, MANNAKANDAM VILLAGE, IDUKKI DISTRICT. BY ADV. SRI.LATHEESH SEBASTIAN RESPONDENT(S)/STATE AND COMPLAINANT: ----- 1. THE STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682031.

2. SUB INSPECTOR OF POLICE, OONNUKAL POLICE STATION, ERNAKULAM DISTRICT-683046. BY PUBLIC PROSECUTOR SMT.SAREENA P.GEORGE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 2708-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: PJ Crl.MC.No. 4881 of 2014 ----- APPENDIX PETITIONERS' ANNEXURES ----- ANNEXURE A1: CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.89 OF 2006 OF OONNUKAL POLICE STATION. RESPONDENTS' ANNEXURE ----- NIL. / TRUE COPY / P.S. TO JUDGE PJ K. Ramakrishnan, J.

=====  
=====  
Crl.M.C.No.4881 of 2014  
Dated this, the 27th day of August, 2014.

## ORDER

This Criminal Miscellaneous Case is filed by the petitioner who is the second accused in C.C.No.02/2007 now pending as L.P.No.01/2012 on the file of the Judicial First Class Magistrate Court, Kothamangalam, to issue direction to the Magistrate under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code').

2. The case of the petitioner in the petition is that he is the second accused in Crime No.89/2006 of Oonnukal Police Station alleging offences punishable under Sections 379 & 411 read with Section 34 of Indian Penal Code. After investigation, final report was filed and it was taken on file as C.C.No.02/2007 on the file of Judicial First Class Magistrate Court, Kothamangalam. It is submitted that the petitioner was not arrested by the 2nd respondent during the crime stage and described the petitioner in the final report as an absconding accused. Since the petitioner was residing in rental premise at the time of the alleged commission of offence, no summons was served on the petitioner and hence Crl.M.C.No.4881 of 2014 :

2. : he could not appear before the learned magistrate and the learned magistrate issued nonailable warrant against the petitioner. The court below, after continuous issuance of warrant against the petitioner, has transferred the above said case to register of long pending cases and it is now pending as L.P.No.01/2012 before that court. Though the petitioner is prepared to surrender,

in view of the pendency of nonailable warrant against him, he apprehends that he is likely to be remanded and his bail application will not be considered on the date of filing of the application itself. So, the petitioner has no other remedy except to approach this Court seeking the following relief: "To direct the JFMC, Kothamangalam to consider and dispose the bail application of the petitioner in L.P.No.1/2012 arising from C.C.No.2/2007 on the same day of surrender on merit in the interest of justice." 3. Considering the nature of relief claimed in the petition, this Court felt that the petition can be disposed of at the admission stage itself after hearing the Counsel for the petitioner and the learned Public Prosecutor.

4. Learned Counsel for the petitioner submitted that his Crl.M.C.No.4881 of 2014 :

3. : only apprehension is that if he surrenders, his bail application will not be considered on the same day and he will be remanded to custody.

5. The petition was opposed by the Public Prosecutor on the ground that he is an absconding accused.

6. It is an admitted fact that the petitioner has been arrayed as second accused in Crime No.89/2006 of Oonnukal Police Station and after investigation, final report was filed and the learned magistrate took cognizance of the case as C.C.No.2/2007. Since he did not appear, the case was transferred to register of long pending cases and it is pending before that court as L.P.No.01/2012. The apprehension of the petitioner that, if he surrenders before the court below and moves for bail, he will be remanded and his application will not be considered on the date of filing itself is not genuine and without any basis. This Court has time and again observed in several petitions of this nature that the Presiding Officers of the criminal courts are duty bound to dispose of the bail applications, if any, filed by the accused persons on their surrender on the date of filing of the application itself unless compelling circumstances warrant postponement of the Crl.M.C.No.4881 of 2014 :

4. : same to a future date. So, in fact, there is no necessity to issue any direction as sought for in the petition. However, considering the apprehension expressed in the petition, this Court feels that the petition can be disposed of as follows: If the

petitioner surrenders before the Judicial First Class Magistrate Court, Kothamangalam and moves for recalling the warrant and for releasing him on bail in L.P.No.01/2012 (Crime No.89/2006 of Oonnukal Police Station) now pending before that court, then, the learned Magistrate is directed to consider and dispose of the bail application after hearing the Assistant Public Prosecutor of that court in accordance with law as far as possible on the date of filing of the application itself. With the above direction and observation, the petition is disposed of. Office is directed to communicate this order to the concerned court immediately. Sd/- K.Ramakrishnan, Judge. Bb [True copy] P.A to Judge

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**