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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 9<sup>TH</sup> DAY OF NOVEMBER 2022 / 18TH KARTHIKA, 1944

CRL.MC NO. 4196 OF 2022

[AGAINST THE PROCEEDINGS DATED 21.06.2022 IN C.C.NO.93/2022 PASSED  
BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KAKKANAD]

PETITIONER/1ST ACCUSED:

CARDINAL MAR GEORGE ALENCHERRY, AGED 77 YEARS,  
S/O.LATE PHILIPOSE, MAJOR ARCHBISHOP,  
SYRO MALABAR CHURCH, ARCH BISHOP HOUSE,  
BROADWAY, ERNAKULAM -682031, NOW RESIDING AT  
MAJOR ARCHIEPISCOPAL CURIA, MOUNT ST.THOMAS,  
KAKKANAD, KOCHI  
PIN - 682030

BY ADVS.

DINESH MATHEW J.MURICKEN

JOHN VARGHESE

K.A.ABHILASH

VINOD S. PILLAI

NAYANA VARGHESE

MOHAMMED THAYIB N.M.

AHAMMAD SACHIN K.

K.S.SANGEETHA (KOOMBEL)

RESPONDENTS/COMPLAINANT, 2ND ACCUSED AND STATE:

- 1 JOSHI VARGHESE, AGE NOT KNOWN TO THE PETITIONER,  
S/O.VAREETH, THELAKKADAN VEETIL,  
MALAMURI BHAGOM, PULLUVAZHI KARA,  
RAYAMANGALAM, ERNAKULAM DISTRICT  
PIN - 683545
- 2 REV.FR.JOSHY PUTHUVA, AGED 50 YEARS  
S/O.OUSEPH, PRO.VIKAR, ST.JOHN'S CHURCH, UNIVERSITY  
CENTRE, CUSAT, PIN - 682032
- 3 STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM  
PIN - 682031  
BY ADVS.  
V.RAJENDRAN (PERUMBAVOOR)  
N.RAJESH(K/1717/1999)  
GOPAKUMAR P.(K/1116-C/2011)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
27.10.2022 ALONG WITH Cr1.MC.4198/2022 AND CONNECTED CASES, THE  
COURT ON 09.11.2022 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 9<sup>TH</sup> DAY OF NOVEMBER 2022 / 18TH KARTHIKA, 1944

CRL.MC NO. 4198 OF 2022

[AGAINST THE PROCEEDINGS DATED 21.06.2022 IN C.C.NO.1886/2019

PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KAKKANAD]

PETITIONER/1ST ACCUSED:

CARDINAL MAR GEORGE ALENCHERRY, AGED 77 YEARS  
S/O.LATE PHILIPOSE, MAJOR ARCHBISHOP,  
SYRO MALABAR CHURCH, ARCH BISHOP HOUSE,  
BROADWAY, ERNAKULAM -682031, NOW RESIDING AT  
MAJOR ARCHIEPISCOPAL CURIA, MOUNT ST.THOMAS,  
KAKKANAD, KOCHI  
PIN - 682030

BY ADVS.

DINESH MATHEW J.MURICKEN

JOHN VARGHESE

K.A.ABHILASH

VINOD S. PILLAI

NAYANA VARGHESE

MOHAMMED THAYIB N.M.

AHAMMAD SACHIN K.

K.S.SANGEETHA (KOOMBEL)

RESPONDENTS/COMPLAINANT, 2ND RESPONDENT AND STATE:

- 1 JOSHI VARGHESE, AGE NOT KNOWN TO THE PETITIONER,  
S/O.VAREETH, THELAKKADAN VEETTIL,  
MALAMURI BHAGOM, PULLUVAZHI KARA,  
RAYAMANGALAM, ERNAKULAM DISTRICT, PIN - 683545
- 2 REV.FR.JOSHY PUTHUVA, AGED 50 YEARS  
S/O.OUSEPH, PRO.VIKAR, ST.JOHN'S CHURCH, UNIVERSITY  
CENTRE, CUSAT, PIN - 682032
- 3 STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031  
BY ADVS.RAJESH N  
GOPAKUMAR P.(K/1116-C/2011)  
GIMMY P ANTONY(K/000150/1989)  
V.RAJENDRAN (PERUMBAVOOR) (K/000364/1975)

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
27.10.2022 ALONG WITH Crl.MC.4196/2022 AND CONNECTED CASES, THE  
COURT ON 09.11.2022 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 9<sup>TH</sup> DAY OF NOVEMBER 2022 / 18TH KARTHIKA, 1944

CRL.MC NO. 4201 OF 2022

[AGAINST THE PROCEEDINGS DATED 21.06.2022 IN C.C.NO.94/2020

PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KAKKANAD]

PETITIONER/1ST ACCUSED:

CARDINAL MAR GEORGE ALENCHERRY, AGED 77 YEARS  
S/O.LATE PHILIPOSE, MAJOR ARCHBISHOP,  
SYRO MALABAR CHURCH, ARCH BISHOP HOUSE,  
BROADWAY, ERNAKULAM -682031, NOW RESIDING AT  
MAJOR ARCHIEPISCOPAL CURIA, MOUNT ST.THOMAS,  
KAKKANAD, KOCHI  
PIN - 682030

BY ADVS.

DINESH MATHEW J.MURICKEN

JOHN VARGHESE

K.A.ABHILASH

VINOD S. PILLAI

NAYANA VARGHESE

MOHAMMED THAYIB N.M.

AHAMMAD SACHIN K.

K.S.SANGEETHA (KOOMBEL)

RESPONDENTS/COMPLAINANT, 2ND ACCUSED AND STATE:

- 1 JOSHI VARGHESE, AGE NOT KNOWN TO THE PETITIONER,  
S/O.VAREETH, THELAKKADAN VEETTIL,  
MALAMURI BHAGOM, PULLUVAZHI KARA,  
RAYAMANGALAM, ERNAKULAM DISTRICT  
PIN - 683545
- 2 REV.FR.JOSHY PUTHUVA, AGED 50 YEARS  
S/O.OUSEPH, PRO.VIKAR, ST.JOHN'S CHURCH, UNIVERSITY  
CENTRE, CUSAT, PIN - 682032
- 3 STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM  
PIN - 682031

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
27.10.2022 ALONG WITH CrI.MC.4196/2022 AND CONNECTED CASES, THE  
COURT ON 09.11.2022 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 9<sup>TH</sup> DAY OF NOVEMBER 2022 / 18TH KARTHIKA, 1944

CRL.MC NO. 4212 OF 2022

[AGAINST THE PROCEEDINGS DATED 21.06.2022 IN C.C.NO.632/2019  
PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KAKKANAD]

PETITIONER/1ST ACCUSED:

CARDINAL MAR GEORGE ALENCHERRY, AGED 77 YEARS  
S/O.LATE PHILIPOSE, MAJOR ARCHBISHOP,  
SYRO MALABAR CHURCH, ARCH BISHOP HOUSE,  
BROADWAY, ERNAKULAM -682031, NOW RESIDING AT  
MAJOR ARCHIEPISCOPAL CURIA, MOUNT ST.THOMAS,  
KAKKANAD, KOCHI, PIN - 682030

BY ADVS.DINESH MATHEW J.MURICKEN  
JOHN VARGHESE  
VINOD S. PILLAI  
K.A.ABHILASH  
NAYANA VARGHESE  
MOHAMMED THAYIB N.M.  
AHAMMAD SACHIN K.  
K.S.SANGEETHA (KOOMBEL)

RESPONDENTS/COMPLAINANT, 2ND AND 3RD ACCUSED AND STATE:

- 1 JOSHI VARGHESE, AGE NOT KNOWN TO THE PETITIONER,  
S/O.VAREETH, THELAKKADAN VEETTIL,  
MALAMURI BHAGOM, PULLUVAZHI KARA,  
RAYAMANGALAM, ERNAKULAM DISTRICT  
PIN - 683545
- 2 REV.FR.JOSHY PUTHUVA, S/O.OUSEPH, PRO.VIKAR, ST.JOHN'S  
CHURCH, UNIVERSITY CENTRE,  
CUSAT, PIN - 682032
- 3 SAJU VARGHESE, AGE NOT KNOWN TO THE PETITIONER,  
S/O.JOHN VARGHESE, GOLDEN OAK VILLA,  
PADAMUGHAL, KAKKANAD, ERNAKULAM DISTRICT  
PIN - 682030
- 4 STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM  
PIN - 682031

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
27.10.2022 ALONG WITH Crl.MC.4196/2022 AND CONNECTED CASES, THE  
COURT ON 09.11.2022 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 9<sup>TH</sup> DAY OF NOVEMBER 2022 / 18TH KARTHIKA, 1944

CRL.MC NO. 4218 OF 2022

[TO CONSIDER C.M.P.NO.798/2022 IN C.C.NO.51/2020 FOR EXEMPTION  
OF PERSONAL APPEARANCE WITHOUT INSISTING FOR PERSONAL APPEARANCE  
AND TAKING BAIL]

PETITIONER/1ST ACCUSED:

CARDINAL MAR GEORGE ALENCHERRY, AGED 77 YEARS  
S/O.LATE PHILIPPOSE, MAJOR ARCHBISHOP, SYRO MALABAR  
CHURCH, ARCH BISHOP HOUSE, BROADWAY, ERNAKULAM -  
682031, NOW RESIDING AT MAJOR ARCHIEPISCOPAL CURIA,  
MOUNT ST.THOMAS, KAKKANAD, KOCHI  
PIN - 682030

BY ADVS.

DINESH MATHEW J.MURICKEN

JOHN VARGHESE

K.A.ABHILASH

VINOD S. PILLAI

MOHAMMED THAYIB N.M.

NAYANA VARGHESE

AHAMMAD SACHIN K.

K.S.SANGEETHA (KOOMBEL)

RESPONDENTS/COMPLAINANT, 2ND ACCUSED AND STATE:

- 1 JOSHI VARGHESE, AGE NOT KNOWN TO THE PETITIONER,  
S/O.VAREETH, THELAKKADAN VEETIL,  
MALAMURI BHAGOM, PULLUVAZHI KARA,  
RAYAMANGALAM, ERNAKULAM DISTRICT  
PIN - 683545
- 2 REV.FR.JOSHY PUTHUVA, AGED 50 YEARS  
S/O.OUSEPH, PRO.VIKAR, ST.JOHN'S CHURCH, UNIVERSITY  
CENTRE, CUSAT  
PIN - 682032
- 3 STATE OF KERALA  
REP. BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM  
PIN - 682031

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
27.10.2022 ALONG WITH Crl.MC.4196/2022 AND CONNECTED CASES, THE  
COURT ON 09.11.2022 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 9<sup>TH</sup> DAY OF NOVEMBER 2022 / 18TH KARTHIKA, 1944

CRL.MC NO. 4226 OF 2022

[TO CONSIDER C.M.P.NO.807/2022 IN C.C.NO.50/2020 FOR EXEMPTION  
OF PERSONAL APPEARANCE WITHOUT INSISTING FOR PERSONAL APPEARANCE  
AND TAKING BAIL]

PETITIONER/1ST ACCUSED:

CARDINAL MAR GEORGE ALENCHERRY, AGED 77 YEARS  
S/O.LATE PHILIPPOSE, MAJOR ARCHBISHOP,  
SYRO MALABAR CHURCH, ARCH BISHOP HOUSE,  
BROADWAY, ERNAKULAM -682031, NOW RESIDING AT  
MAJOR ARCHIEPISCOPAL CURIA, MOUNT ST.THOMAS,  
KAKKANAD, KOCHI  
PIN - 682030

BY ADVS.DINESH MATHEW J.MURICKEN  
JOHN VARGHESE  
VINOD S. PILLAI  
K.A.ABHILASH  
MOHAMMED THAYIB N.M.  
NAYANA VARGHESE  
K.S.SANGEETHA (KOOMBEL)  
AHAMMAD SACHIN K.

RESPONDENTS/COMPLAINANT, 2ND ACCUSED AND STATE:

- 1 JOSHI VARGHESE, AGE NOT KNOWN TO THE PETITIONER,  
S/O.VAREETH, THELAKKADAN VEETIL,  
MALAMURI BHAGOM, PULLUVAZHI KARA,  
RAYAMANGALAM, ERNAKULAM DISTRICT  
PIN - 683545
- 2 REV.FR.JOSHY PUTHUVA, AGED 50 YEARS  
S/O.OUSEPH, PRO.VIKAR, ST.JOHN'S CHURCH, UNIVERSITY  
CENTRE, CUSAT  
PIN - 682032
- 3 STATE OF KERALA  
REP. BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
27.10.2022 ALONG WITH Crl.MC.4196/2022 AND CONNECTED CASES, THE  
COURT ON 09.11.2022 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

WEDNESDAY, THE 9<sup>TH</sup> DAY OF NOVEMBER 2022 / 18TH KARTHIKA, 1944

CRL.MC NO. 4232 OF 2022

[TO CONSIDER C.M.P.NO.794/2022 IN C.C.NO.93/2020 FOR EXEMPTION  
OF PERSONAL APPEARANCE WITHOUT INSISTING FOR PERSONAL APPEARANCE  
AND TAKING BAIL]

PETITIONER/1ST ACCUSED:

CARDINAL MAR GEORGE ALENCHERRY, AGED 77 YEARS  
S/O.LATE PHILIPPOSE, MAJOR ARCHBISHOP,  
SYRO MALABAR CHURCH, ARCH BISHOP HOUSE,  
BROADWAY, ERNAKULAM -682031, NOW RESIDING AT  
MAJOR ARCHIEPISCOPAL CURIA, MOUNT ST.THOMAS,  
KAKKANAD, KOCHI  
PIN - 682030

BY ADVS.DINESH MATHEW J.MURICKEN  
JOHN VARGHESE  
VINOD S. PILLAI  
K.A.ABHILASH  
MOHAMMED THAYIB N.M.  
NAYANA VARGHESE  
AHAMMAD SACHIN K.  
K.S.SANGEETHA (KOOMBEL)

RESPONDENTS/COMPLAINANT, 2ND ACCUSED AND STATE:

- 1 JOSHI VARGHESE, AGE NOT KNOWN TO THE PETITIONER,  
S/O.VAREETH, THELAKKADAN VEETIL,  
MALAMURI BHAGOM, PULLUVAZHI KARA,  
RAYAMANGALAM, ERNAKULAM DISTRICT  
PIN - 683545
- 2 REV.FR.JOSHY PUTHUVA, AGED 50 YEARS  
S/O.OUSEPH, PRO.VIKAR, ST.JOHN'S CHURCH, UNIVERSITY  
CENTRE,  
CUSAT, PIN - 682032
- 3 STATE OF KERALA  
REP. BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM  
PIN - 682031

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
27.10.2022 ALONG WITH Crl.MC.4196/2022 AND CONNECTED CASES, THE  
COURT ON 09.11.2022 PASSED THE FOLLOWING:

O R D E R

[Crl.MC Nos.4196/2022, 4198/2022, 4201/2022, 4212/2022,  
4218/2022, 4226/2022, 4232/2022]

....

All these Criminal M.C.s are filed by the accused seeking a direction to the Judicial First Class Magistrate Court, Kakkanad, to consider the applications submitted by him under section 205 of the Cr.P.C, for exemption from personal appearance in the cases registered against him, without insisting for his personal appearance, even for the first time.

2. All the said cases are instituted upon private complaints submitted by the 1<sup>st</sup> respondent in all the said Crl.M.C.s, and the offences alleged are under Section 406,423, 120B read with Section 34 of the Indian Penal Code, and the petitioner is the first accused in all the said cases. In all the said cases, the petitioner was served with the summons and the petitioner submitted applications under Section

205 of Cr.P.C seeking exemption from personal appearance before the court and to permit him to appear through his counsel. The applications submitted in this regard are pending before the learned Magistrate and the learned Magistrate directed the petitioner to appear in person before the court, even before passing orders on the said applications. The details of the cases and the applications filed are as follows:

SL No	CrI MC. NO	CC No	CMP No
1.	CrI.M.C.No.4212/2022	C.C.No.632/2019	CMP.No.869/2022
2.	CrI.M.C.No.4201/2022	C.C.No.94/2020	CMP.No.800/2022
3.	CrI.M.C.No.4198/2022	C.C.No.1886/2019	CMP.No.803/2022
4.	CrI.M.C.No.4196/2022	C.C.No.93/2022	CMP.No.1379/2022
5.	CrI.M.C.No.4226/2022	C.C.No.50/2020	CMP.No.807/2022
6.	CrI.M.C.No.4232/2022	C.C.No.93/2020	CMP.No.794/2022
7.	CrI.M.C.No.4218/2022	C.C.No.51/2020	CMP.No.798/2022

3. In the cases shown as serial Nos. 1 to 4, the learned Magistrate passed orders directing

the petitioners to appear before the court, before the respective applications for exemption are considered, whereas in the remaining cases, oral directions to that effect were issued. These Crl.M.Cs were filed in such circumstances, seeking a direction to the learned Magistrate to consider the applications submitted for exemption under Section 205 of Cr.P.C, without insisting on the personal appearance of the petitioner.

4. The reason highlighted by the petitioner for exemption from personal appearance, as mentioned in his applications, is as follows;

*"2. The petitioner is a senior citizen aged 77 years. The petitioner is the head of Syro Malabar Church spread over whole world, having a membership of 55 lakhs. The petitioner bestowed with the duty of performing religious ceremonies, rituals, including ordination of Bishops,pries, consecration of churches, etc. The petitioner also had to render supervisory administrative functions over 35 dioceses out of which 4 are out of India and 18 are outside Kerala. The petitioner is also the head of the Kerala Catholic Bishop's Council and he has to attend meetings as well as perform duties as the President of KCBC. The petitioner is also*

*the member of College of Cardinals and also has to attend meetings in Rome.*

*3. The allegation in this case are basically based on documents. The identification of the petitioner is not necessary with respect to the evidence in this case. The petitioner had filed an undertaking stating that he will not dispute his identity, he will appear through a counsel and his counsel will be present on all posting dates and also he does not have any objection in taking the evidence in his absence treating the presence of the counsel as his presence. The petitioner also has authorized his counsel to record his plea."*

5. Heard Sri.P.Vijayabahanu, the learned Senior Counsel, assisted by Sri.John Varghese, learned counsel appearing for the petitioner in all the Crl.M.Cs, Sri.Vipin Narayan, learned Public Prosecutor for the State and Sri.V.Rajendran learned Counsel appearing for 1<sup>st</sup> respondent/complainant.

6. The learned Senior Counsel contends that, as per Section 205 of Cr.P.C., the learned Magistrate has ample power to grant exemption to the petitioner from appearing in person, and that power includes the exemption for the first

appearance also. Therefore, when the petitioner submitted the applications in this regard, the learned Magistrate ought to have taken a decision thereon first, before insisting on his personal appearance. The learned Senior Counsel places reliance on various decisions such as *M/s.Bhaskar Industries Ltd v. Bhiwani Denim Apparels Ltd and Others*[(2001) 7 SCC 401], *TGN Kumar v. State of Kerala And others* [2011 (1) KLT 362], *Rameshwar Yadav and others v. State of Bihar and another* [(2018) 4 SCC 608], *Puneet Dalmia v. Central Bureau of Investigation, Hyderabad* [(2020) 12 SCC 695], *Mathew v. State of Kerala* [1986 KLT 128], *Raman Nair v. State of Kerala* [1999 (3) KLT 714], *Jain Babu v. Joseph* [2008 (4) KLT 16], *Raju.T.P v. State of Kerala* [2009 (3) KHC 14], *Sarath.S v. State of Kerala* [2017 (3) KLT 95], *Kaveri and others v. The State* [MANU/OR/0296/1994], *Ramesh Chandra Lath v. State of Orissa* [MANU/OR/0428/1991], *Surojith Sen and others v.*

*Sanatan Behera [MANU/OR/0182/1999], Ajit Kumar Chakraborty and others v. Serampore Municipality [MANU/WB/0188/1988], Manager, V.G Panneerdas and Company v. Nataraja Thevar [MANU/TN/0444/1987] and M.Shyam Prasad Reddy v. The State of Andhra Pradesh [MANU/AP/0555/1992]*

7. The aforesaid contentions are stoutly opposed by the learned counsel appearing for the complainant, the 1<sup>st</sup> respondent herein. According to him, the petitioner does not have any vested right to seek exemption, and it is the discretion of the court concerned. In this case, the court has not rejected the prayer sought by the petitioner but only insisted on the appearance of the petitioner so that he can seek bail by offering sureties and executing bonds, thereby subjecting himself to the jurisdiction of the court and making an assurance before the court through a bond to the effect that he shall

cooperate with the trial by abiding by the conditions imposed by the court. The learned counsel also placed reliance upon statutory stipulations contained in Section 437 of Cr.P.C, which contain certain conditions to be imposed by the court while the accused is released on bail when he is arrested and brought before the court or appears before the court, in a case in which non-bailable offences are alleged. It is contended that, admittedly, the petitioner is the head of Syro Malabar Church spread over the whole world. Most of the witnesses to be examined in the case belong to the said Church, and the documents to be summoned/perused are in the custody of the members of the Church governed by him. Therefore, since he is holding an influential position, it is absolutely necessary to execute a bond, undertaking to abide by the mandatory conditions contemplated

under Section 437 Cr.P.C, including the condition that he shall not directly or indirectly influence the witnesses and shall not dissuade such witnesses from disclosing such facts to the court necessary for the case or shall not tamper with the evidence. However, the learned counsel for the 1<sup>st</sup> respondent fairly conceded that he does not have any objection in granting exemption to the petitioner from personal appearance, once the petitioner appears before the court and is released on bail upon executing the bond.

8. Thus, the questions to be decided are (1) whether the petitioner has any right to insist on the consideration of his application for personal exemption without his personal appearance for the first time and (2) whether the order directing the personal appearance of the petitioner passed by the learned Magistrate,

before taking a decision submitted by the petitioner under section 205 of Cr.P.C is legally correct or not.

9. While considering the first question, the relevant provision is Section 205 of the Cr.P.C, which reads as follows:

***"205. Magistrate may dispense with personal attendance of accused.***

*(1)Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.*

*(2)But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner herein before provided."*

10. From the reading of the said provision, it can be seen that, the Magistrate has the discretion to exempt the accused from personal appearance, even at the time of issuance of summons. The circumstances under which such discretion can be exercised were the subject matter of a large number of decisions of the Honourable Supreme Court and various High

Courts. In **Bhaskar Industries (supra)**, it was observed by the Honourable Supreme Court in para 14 as follows:

*".....Presence of the accused in the Court is not for marking his attendance just for the sake of seeing him in the court. It is to enable the Court to proceed with the trial. If the progress of the trial can be achieved even in the absence of the accused the court can certainly take into account the magnitude of the sufferings which a particular accused person may have to bear with in order to make himself present in the court in that particular case."*

11. In paragraphs 16, 17 and 19, it was observed as follows:

*16. Section 251 is the commencing provision in Chapter XX of the Code which deals with trial of summons cases by magistrates. It enjoins on the court to ask the accused whether he pleads guilty when the accused appears or is brought before the magistrate. The appearance envisaged therein can either be by personal attendance of the accused or through his advocate. This can be understood from Section 205(1) of the Code which says that whenever a magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.*

*17. Thus, in appropriate cases the magistrate can allow an accused to make even the first appearance through a counsel. The magistrate is empowered to record the plea of the accused even when his counsel makes such plea on behalf of the accused in a case where the personal appearance of the accused is dispensed with. Section 317 of the Code has to be viewed in the above perspective as it empowers the court to dispense with the*

*personal attendance of the accused (provided he is represented by a counsel in that case) even for proceeding with the further steps in the case. However, one precaution which the court should take in such a situation is that the said benefit need be granted only to an accused who gives an undertaking to the satisfaction of the court that he would not dispute his identity as the particular accused in the case, and that a counsel on his behalf would be present in court and that he has no objection in taking evidence in his absence. This precaution is necessary for the further progress of the proceedings including examination of the witnesses.*

*18....*

*19.The position, therefore, boils down to this:It is within the powers of a magistrate and his judicial discretion to dispense with the personal appearance of an accused either throughout or at any particular stage of such proceedings in a summons case, if the magistrate finds that insistence of his personal presence would itself inflict enormous suffering or tribulations to him and the comparative advantage would be less. Such discretion need be exercised only in rare instances where due to far distance at which the accused resides or carries on business or on account of any physical or other good reasons the magistrate feels that dispensing with the personal attendance of the accused would only be in the interest of justice. However,the magistrate who grants such benefit to the accused must take precautions enumerated above,as a matter of course. We may reiterate that when as accused makes an application to a magistrate through his duly authorized counsel praying for affording the benefit of his personal presence being dispensed with the magistrate can consider all aspects and pass appropriate orders thereon before proceeding further."*

12. It is to be noted that the case dealt with in **Bhaskar Industries** (*supra*) was a summons case for the offence under Section 138 of the

Negotiable Instruments Act. The factual circumstances under which the same rendered were that the accused was from a different State and was implicated as an accused because he was the Director of the Company.

13. The said view was reiterated by the Honourable Supreme Court in **TGN Kumar's case** (supra), which was again a case where the offence was under Section 138 of the Negotiable Instruments Act.

14. In **Puneet Dalmia's case** (supra), the offences alleged were under Sections 420 and 409, read with Section 120B of IPC and Sections 9, 12, 13(2) and 13(1)(c) and (d) of the prevention of Corruption Act, 1988. After referring to the **Bhaskar Industries** case (supra), it was held that the said principles could also be applied in that case, even though the allegations were serious. However, in the

said case, the exemption was sought after the petitioner therein was released on bail by the court and hence the factual situation was different from that of this case.

15. In **Rameshwar Yadav's** case (supra), the Honourable Supreme Court upheld the discretion vested upon the learned Magistrate in granting exemption from personal appearance in a case registered for the offence punishable under section 4 of the Dowry Prohibition Act, 1961 and Section 498A of Indian Penal Code. However, the question considered therein was whether the powers under Section 205 Cr.p.C could be exercised, after the accused appeared in person without claiming exemption. It was held that the said discretion is available for the Magistrate even after the appearance of the accused.

16. In **Mathew's** case (supra), the power of the Magistrate to grant an exemption for the

first appearance in a prosecution for the offence under Section 420 of IPC was considered by this court. In the said case, the accused was in Switzerland, and a non bailable warrant was issued against him and his passport was also impounded, making his return impossible. While considering the application for exemption under Section 205 of Cr.P.C, it was observed by this court in para 6 of the judgment in the manner as follows:

*"The very existence of the courts is for dispensation of justice. The process of courts should not be used for harassment of litigants. The insistence on the appearance of parties before court need be only if it becomes absolutely necessary for some purpose. Courts are entitled to compel the appearance of the accused. But such insistence should not be for the mere pleasure of the accused being seen in the dock. Sometimes, his presence may be absolutely essential, say for instance for questioning him or for himself being identified by witnesses. Insistence on his appearance in such cases may be alright. To insist on his appearance on a day when his appearance has nothing to do with the progress of the case will only result in unnecessary harassment, especially when he has some inconvenience and his counsel is prepared to represent him. In this case that is what actually happened. The petitioner who is the accused before the Magistrate is already in Switzerland. Even if he wanted he*

*was not in a position to come over to India and appear before the Magistrate because on the requisition of the Magistrate himself his passport was impounded by the concerned authorities. The Magistrate ought to have realized the fact that under such circumstances appearance of the accused before him was rather an impossibility. One could only enjoy sadistic pleasure by insisting on an unnecessary impossibility and penalizing a person for not complying with such a condition"*

17. In **Raju T.P's** case (supra), this Court held that the said power could be exercised subject to the discretion of the court. It was further observed that discretion is to be exercised considering not only the convenience of the prosecution but also the difficulties expressed by the accused. It was further observed that the said power is available in warrant cases as well. It was a case where the accused was working in Pune.

18. In **Sarath. S's** case (supra), this court held that the pendency of a nonailable warrant against the accused cannot be a ground for refusing the prayer under section 205 of Cr.p.C,

if appropriate grounds are made out. That observation was made in a case of warrant trial where the accused was working at Sharjah, and a non bailable warrant was issued by JFCM, Mavelikkara.

19. In the other decisions cited by the learned Senior Counsel for the petitioner, the Orrisa High Court, Madras High Court, Calcutta High Court and Andhra Pradesh High Court have taken the same view.

20. Thus, upon scanning through all the said decisions, the only conclusion possible is that the Magistrate has the discretion to grant exemption from personal appearance to the accused, even before his first appearance in person, and he can be permitted to appear through counsel if appropriate grounds are made out. The said discretion is available even in both summons and warrant cases. However, going

by the observations of the Honourable Supreme Court in **Bhaskar industries** case, such discretion can be exercised only in rare cases where the Magistrate feels that personal attendance could be dispensed with due to far distance at which the accused resides or carries on business or on account of physical or other goods reasons.

21. The said conclusion leads us to the next question, i.e., whether the action of the learned Magistrate in insisting on the personal appearance while his applications were pending consideration is correct. It is true that, in some of the decisions referred to above (**Raju T.P 's case and Sarath.S's case**), it was categorically held that even the first appearance of the accused could be permitted to be made through counsel if there are sufficient reasons indicating hardships for the accused in

appearing before the court. It is also discernible that in those cases, the accused persons were working out of the State or abroad, and non bailable warrants happened to be issued.

22. In this case, it is evident that the applications submitted by the petitioner were not dismissed, and the same are pending consideration. There is no doubt that the normal rule is that, upon receipt of a summons, the accused is under an obligation to appear before the Court unless he is exempted from personal appearance. It is a well settled position of law that the exemption, which is an exception to the normal rule, is subject to the discretion of the Court, which has to be exercised cautiously and judiciously in rare instances, (as held in **Bhaskar Industries Case** (supra) taking into account the hardship that is likely to be caused to the accused. It is not necessary to insist on

the physical appearance of the accused on all posting dates, unless his appearance is absolutely necessary for the proceedings of the day. If the appearance can be dispensed with, without affecting the proceedings of the court, appropriate orders in this regard should be passed.

23. However, when the exemption sought is for the first appearance, the standards to be applied should be more stringent. In this regard, the contention raised by the learned counsel for the 1<sup>st</sup> respondent, relying on the stipulations in section 437 of Cr.P.C, is relevant. The said provision deals with the circumstances under which bail can be granted to a person who is accused of a non-bailable offence, when he is brought before the court or appears before the court. Subsection (3) of Section 437 reads as follows:

*"437(3): When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the Court may impose any condition which the Court considers necessary-*  
*(a) in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or*  
*(b) in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or*  
*(c) otherwise in the interests of justice."*

24. From the above, it is evident that when a person accused or suspected of the commission of an offence punishable with imprisonment, which may extend to seven years or more or of an offence under Chapter XVI or XVII, appears or brought before the court, his release on bail shall be subject to the conditions as mentioned above. Therefore, in respect of the persons accused of the offences included in the category of the offences coming under Sub Section(3) of Section 437, the Court is bound to impose the conditions stipulated therein. The word used in

Sub Section (3) of Section 437 as regards the imposition of conditions is '*shall*', which indicates that the same is mandatory. In the light of the mandatory nature of the conditions, it is absolutely necessary that the accused executes a bond, undertaking to abide by the said conditions, for which the personal appearance of the petitioner is required. Therefore the first appearance of the petitioner, as far as the offences covered by Section 437 (3) of Cr.P.C. are concerned, is not a mere formality but a necessity to ensure that the accused agrees to abide by the conditions stipulated therein, by executing a bond in this regard. Though, exemption from personal appearance for the first appearance can be granted to the person accused of the aforesaid offences, it should be in exceptional circumstances, where extreme hardship is caused

to the accused, or the accused is unable to appear before the court due to reasons beyond his control.

25. Now, coming to the facts of this case, the offences alleged against the petitioner include those under Sections 409,420 and 467 of the Indian Penal Code, which are punishable with imprisonment for seven years or more. In some of the cases, the offences alleged against the petitioner are under Sections 406 and 423, read with 120B of IPC. Even though the punishment for the said offences is imprisonment for a term lesser than seven years, those offences come under Chapter XVII of IPC, and hence for that reason, that would come under Sub-Section (3) of Section 437 of the Cr.P.C. Therefore, the rigour of the said provision applies to all the cases of the petitioner. Unless there are exceptional grounds, the exemption from personal appearance

for the first appearance cannot be granted. As mentioned above, in the **Bhaskar Industries case** (supra), the reasons mentioned are due to the far distance at which the accused resides or carries on business or on account of physical or other goods reasons.

26. When considering whether any reasonable or exceptional circumstances exist, the reason mentioned in the application submitted by the petitioner is to be considered. As rightly pointed out by the learned counsel for 1<sup>st</sup> respondent, even according to him, the petitioner is the head of Syro Malabar Church spread all over the world, having a membership of 55 lakhs. He has supervisory administrative functions over 36 dioceses, of which four are out of India and 18 are outside Kerala. He has to attend meetings and perform duties as the President of KCBC. Since he is a member of the

College of Cardinals, he also has to participate in meetings in Rome. Thus it can be seen that he is admittedly attending meetings worldwide as part of administrative functions. This would indicate that he is not under any physical difficulty, which prevents him from appearing before the court at least on one occasion to take bail and execute the bond, agreeing the conditions in Sub Section(3) of Section 437 of Cr.P.C. The crucial aspect to note in this regard is that the petitioner ordinarily resides within the territorial jurisdiction of the Judicial First Class Magistrate Court, Kakkanad, where the cases are pending. It is reported that the distance between the place of the residence of the petitioner and the court is just about 3 Kms. Therefore, under any circumstances, it cannot be concluded that there exists exceptional circumstances which prevent the

petitioner from attending the court in person, at least for the first time and executing bonds in tune with section 437(3) of the Cr.P.C.

27. There is yet another aspect which makes the prayer sought in these Crl.M.Cs. unsustainable. As mentioned above, the accused is bound to appear before the court unless the court exempts him from personal appearance. Since exemption contemplated under Section 205 Cr.P.C, is an exception to the normal rule requiring the physical presence of the accused before the court, subject to the discretion of the court, it cannot be contended that the accused has a vested right to get an exemption. The only obligation on the part of the learned Magistrate is that he has to exercise the discretion judiciously. In this case, I have already found that no exceptional circumstances are in existence warranting an order exempting

the petitioner from the 1<sup>st</sup> appearance. Therefore, I do not find any justification on the part of the petitioner in seeking an order directing the Magistrate to consider the application for exemption under section 205 without insisting on the physical presence of the petitioner. In my view, nothing precludes the learned Magistrate from insisting on the personal appearance of the petitioner before considering his application. It is also to be noted in this regard that the prayer in the petition submitted by the petitioner before the Magistrate is to exempt him from personal appearance throughout the trial and the said prayer can be considered by the learned Magistrate, even after the first appearance of the petitioner. So no prejudice would be caused to the petitioner by appearing before the court and executing the bonds.

28. Moreover, granting an exemption to the petitioner for the first appearance in this case, would send a wrong message to the Society as well. According to the petitioner, he is a religious head required to carry out several functions in various capacities and seeks exemption on that ground. In my view, the position that he holds would not make him entitled to any special privileges when he is brought before a court of law as an accused. The statutory mandate is over and above all the superiority the accused possesses or claims to have, by virtue of his position. Irrespective of his position, he is just an accused before the court of law, who is not entitled to claim any special privilege and is required to face the proceedings just like any other citizen. The provisions of Cr.P.C does not distinguish between ordinary citizens and persons holding

superior positions in their religious, political, social, or other institutions. Equality before the law, the laudable principle enshrined in Article 14 of the Constitution of India, is not confined in its application only in cases where one seeks to enforce his rights. It is equally applicable when a person is proceeded against for violating the law or for committing an offence, and no preferential treatment can be claimed by anyone for any reason whatsoever, unless the statute contemplates such privilege. As observed by the Honourable Supreme Court, in **Lily Begum v. Joy Chandra Nagbanshi [(1994) 2 SCC 39]**, which is relied on by the learned Counsel for the 1<sup>st</sup> respondent, if such a privilege is given to the accused, people will lose their confidence in the administration of justice.

29. Thus, after considering all the relevant aspects, I am of the firm view that the prayers sought by the petitioner cannot be granted, and these Crl.M.Cs are devoid of any merit. Hence, I am not inclined to grant the relief sought. However, it is made clear that the observations made by this court in this order are only in respect of the prayer for exemption from the first appearance of the petitioner in person. Once the petitioner appears and is released on bail on executing bonds, the applications submitted by the petitioner under Section 205 Cr.P.C. are to be considered without any delay, by taking into account the fact that the physical presence of the petitioner may not be required on all posting dates. This is mainly because, the question of identity is not a matter of concern, and the learned counsel for the 1<sup>st</sup> respondent conceded before this Court

that he does not have any objection in granting exemption to the petitioner under Section 205 of Cr.P.C., once the petitioner appears before the court and takes bail. Since the proceedings pending before the Magistrate are instituted upon private complaint, the concession made by the 1<sup>st</sup> respondent is relevant and can be acted upon while deciding the said applications.

The Crl.M.Cs are disposed of with the above observations.

Sd/-

**ZIYAD RAHMAN A.A.**  
**JUDGE**

pkk

APPENDIX OF CRL.MC 4196/2022

PETITIONER'S ANNEXURES:

- ANNEXURE A1 TRUE COPY OF THE APPLICATION IN  
C.M.P.NO.1379/2022 DATED 21.06.2022 FILED  
BY THE PETITIONER BEFORE THE JUDICIAL FIRST  
CLASS MAGISTRATE COURT, KAKKANAD
- ANNEXURE A2 CERTIFIED COPY OF THE PROCEEDINGS DATED  
21.06.2022 IN C.C.NO.93/2022 ON THE FILE OF  
JUDICIAL FIRST CLASS MAGISTRATE COURT,  
KAKKANAD
- ANNEXURE A3 CERTIFIED COPY OF THE PROCEEDINGS DATED  
21.06.2022 IN C.M.P.NO.1379/2022 IN  
C.C.NO.93/2022 ON THE FILE OF JUDICIAL  
FIRST CLASS MAGISTRATE COURT, KAKKANAD

APPENDIX OF CRL.MC 4198/2022

PETITIONER'S ANNEXURES:

- ANNEXURE A1 TRUE COPY OF THE APPLICATION IN  
C.M.P.NO.803/2022 DATED 12.04.2022 FILED BY  
THE PETITIONER BEFORE THE JUDICIAL FIRST  
CLASS MAGISTRATE COURT, KAKKANAD
- ANNEXURE A2 CERTIFIED COPY OF THE PROCEEDINGS DATED  
21.06.2022 IN C.C.NO.1886/2019 ON THE FILE  
OF JUDICIAL FIRST CLASS MAGISTRATE COURT,  
KAKKANAD
- ANNEXURE A3 CERTIFIED COPY OF THE PROCEEDINGS DATED  
21.06.2022 IN C.M.P.NO.803/2022 IN  
C.C.NO.1886/2019 ON THE FILE OF JUDICIAL  
FIRST CLASS MAGISTRATE COURT, KAKKANAD

APPENDIX OF CRL.MC 4201/2022

PETITIONER'S ANNEXURES:

- ANNEXURE A1 TRUE COPY OF THE APPLICATION IN  
C.M.P.NO.800/2022 DATED 12.04.2022 FILED BY  
THE PETITIONER BEFORE THE JUDICIAL FIRST  
CLASS MAGISTRATE COURT, KAKKANAD
- ANNEXURE A2 CERTIFIED COPY OF THE PROCEEDINGS DATED  
21.06.2022 IN C.C.NO.94/2020 ON THE FILE OF  
JUDICIAL FIRST CLASS MAGISTRATE COURT,  
KAKKANAD
- ANNEXURE A3 CERTIFIED COPY OF THE PROCEEDINGS DATED  
21.06.2022 IN C.M.P.NO.800/2022 IN  
C.C.NO.94/2020 ON THE FILE OF JUDICIAL  
FIRST CLASS MAGISTRATE COURT, KAKKANAD

APPENDIX OF CRL.MC 4212/2022

PETITIONER'S ANNEXURES:

- ANNEXURE A1 TRUE COPY OF THE COMPLAINT IN C.C.NO.632/2019 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KAKKANAD DATED 16.07.2018
- ANNEXURE A2 TRUE COPY OF THE ORDER IN SPL.LEAVE TO APPEAL (CRL.) NO.2849/2022 AND CONNECTED CASES PASSED BY THE HONOURABLE SUPREME COURT OF INDIA DATED 01.04.2022
- ANNEXURE A3 TRUE COPY OF THE APPLICATION IN C.M.P.NO.869/2022 DATED 12.04.2022 FILED BY THE PETITIONER BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KAKKANAD
- ANNEXURE A4 CERTIFIED COPY OF THE PROCEEDINGS DATED 21.06.2022 IN C.C.NO.632/2019 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KAKKANAD
- ANNEXURE A5 CERTIFIED COPY OF THE PROCEEDINGS DATED 21.06.2022 IN C.M.P.NO.869/2022 IN C.C.NO.632/2019 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KAKKANAD

APPENDIX OF CRL.MC 4218/2022

PETITIONER'S ANNEXURE:

ANNEXURE A1                    TRUE    COPY    OF    THE    APPLICATION    IN  
C.M.P.NO.798/2022 DATED 12.04.2022 FILED BY  
THE PETITIONER BEFORE THE JUDICIAL FIRST  
CLASS MAGISTRATE COURT, KAKKANAD

APPENDIX OF CRL.MC 4226/2022

PETITIONER'S ANNEXURE:

ANNEXURE A1                    TRUE    COPY    OF    THE    APPLICATION    IN  
C.M.P.NO.807/2022 DATED 12.04.2022 FILED BY  
THE PETITIONER BEFORE THE JUDICIAL FIRST  
CLASS MAGISTRATE COURT, KAKKANAD

APPENDIX OF CRL.MC 4232/2022

PETITIONER'S ANNEXURE:

ANNEXURE A1                    TRUE    COPY    OF    THE    APPLICATION    IN  
C.M.P.NO.794/2022 DATED 12.04.2022 FILED BY  
THE PETITIONER BEFORE THE JUDICIAL FIRST  
CLASS MAGISTRATE COURT, KAKKANAD