

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

Crl.MC.No. 54 of 2015 ()

AGAINST THE ORDER IN CC 869/2006 of J.M.F.C., AMBALAPUZHA,
DATED 12.12.2014 IN CRIME NO. 174/2001 OF PUNNAPRA POLICE STATION,
ALAPPUZHA

PETITIONER/ACCUSED NO.2:-

R.SANAL KUMAR AGED 48 YEARS
S/O.RAGHAVAN, RANDUTHAYYIL VEEDU, WARD NO.8
PUNNAPRA PANCHAYATH, AMBALAPPUZHA, ALAPPUZHA DISTRICT.

BY ADVS.SRI.C.K.SAJEEV
SRI.M.V.BAIJU

RESPONDENTS/COMPLAINANT AND ACCUSED NO.1 AND 3 TO 8.:-

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA AT ERNAKULAM-682031.

2. SELVARAJ, AGED 30 YEARS
S/O.DEYANANDHAN, KUTTUNKAL VEEDU
PUNNAPRA VADAKKU PANCHAYATH WARD NO.8-688014.

3. DEVARAJAN
S/O.DINESAN, THEKKEPARAMBIL VEEDU
PUNNAPRA VADAKKU PANCHAYATH WARD NO.8-688014.

4. MADHU, AGED 34 YEARS
S/O.THANKAPPAN, VADAKKEPARAMBU VEEDU
PUNNAPRA VADAKKU PANCHAYATH WARD NO.8-688014.

5. SATHEESH BABU
S/O.KESEVAN, NADUVILE PARAMBU
PUNNAPRA VADAKKU PANCHAYATH WARD NO.12-688014.

6. PANKAJAKSHAN
S/O.KESEVAN, NADUVILE PARAMBU
PUNNAPRA VADAKKU PANCHAYATH WARD NO.10-688014.

7. SANIL KUMAR @ SURESH BABU
S/O.SAHADDEVAN, VADAKKEPARAMBIL VEEDU
PUNNAPRA VADAKKU PANCHAYATH WARD NO.8-688014.

(.....2)

8. AJAIGHOSH, AGED 28 YEARS
S/O.REGHUVARAN, VADAKKEPARAMBIL VELI VEEDU
PUNNAPRA VADAKKAU PANCHAYATH-688014.

R1 BY PUBLIC PROSECUTOR SMT.S.HYMA.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
07-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

ANNEXURE-1: COPY OF THE MAHAZAR DTD.20.1.2002 IN CRIME NO.174/
2001 OF THE PUNNAPRA POLICE STATION.

ANNEXURE-2: COPY OF THE REPORT NO.CX-29 DTD.29.10.2007 ISSUED BY
THE HAND WRITING EXPERT.

ANNEXURE-3: COPY OF THE COMMON ORDER DTD.12.12.2014 IN CMP.NO.
8755/14 & 7856/14 IN CC.NO.869/2006 OF THE J.F.C.M.
COURT, AMBALAPPUZHA.

ANNEXURE-3 (a): COPY OF TYPE WRITTEN LEGIBLE COPY OF THE COMMON
ORDER DATED 12.12.2014 IN CMP.NO.7855/14 & 7856/14
IN CC.NO.869/2006 OF THE J.F.C.M. COURT, AMBALAPPUZHA.

RESPONDENTS' EXHIBITS:- NIL.

(TRUE COPY)

P.S. TO JUDGE.

Kvs/-

P.UBAID, J.

Crl.M.C.No.54 OF 2015

Dated this the 7th day of January, 2015

O R D E R

The petitioner herein is the second accused in C.C. No.869 of 2006 of the Judicial First Class Magistrate Court, Ambalapuzha. The petitioner along with the seven others have been facing prosecution under Section 406 read with Section 34 IPC. The prosecution has already examined ten witnesses in the case. When called upon to adduce defence evidence, the petitioner examined himself as DW1 with permission under Section 315 of CrI.P.C. and Exhibits D1 to D4 were also marked in defence. Thereafter, the petitioner filed two applications; one to receive an additional document, which is the certified copy of a document already produced in another proceeding, and the other to recall PW10 and DW1 for further examination. The learned Magistrate dismissed both the applications on 12/12/2014 on the ground that the petitioner could not convince the learned Magistrate about the absolute

necessity of such a course, and that such request cannot be granted just because the former counsel relinquished his vakkalath.

2. On hearing both sides, I find that the learned Magistrate has not seriously considered the request of the petitioner. When such an application comes, the court must consider whether such document is absolutely necessary, and whether any witness will have to be recalled for examination or cross-examination for a just decision. I am satisfied that the material document, proposed to be produced by the petitioner and sought to be received as an additional evidence, will have some bearing on the dispute in question, and the investigating officer examined as PW10 will have to be further examined regarding the said document. In short, further cross examination of the prosecution witness will be necessary for just decision when additional document proposed by the petitioner is received in evidence. What is proposed by him is not a new material or document. It is only the certified copy of a document already produced in another proceeding.

In the result, the petition is allowed. The impugned

common order is hereby set aside and the petitioner is hereby permitted to produce additional document in defence and also to recall PW10 and DW1 for further examination, for a just decision.

Sd/-

P.UBAID, Judge.

dpk

/True copy/ PS to Judge.