

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

Crl.MC.No. 326 of 2015 ()

IN CC 314/2013 of JUDL. MAGISTRATE OF FIRST CLASS, KOTHAMANGALAM

PETITIONER(S)/ACCUSED:

**RINCY AGED 35 YEARS
W/O.BIJU, KANJIRAMOOTIL HOUSE, KOTHAMANGALAM P.O.
ERNAKULAM.**

**BY ADVS.SRI.K.R.VINOD
MS.JENCY SUSAN JOSE
SRI.V.SRI NATH
SRI.K.P.WILSON (KOTHAMANGALAM)**

RESPONDENT(S)/COMPLAINANT:

- 1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.**
 - 2. SURESH KUMAR K.P.
KOCHUVEETIL HOUSE, KOTHAMANGALAM P.O, ERNAKULAM.**
- R1 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE. P**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09-02-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 326 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE-A1. TRUE COPY OF THE COMPLAINT IN CC 314/2013 FILED BY THE 2ND RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT -I, KOTHAMANGALAM.

ANNEXURE-A2. TRUE COPY OF THE WITNESS AND DOCUMENTS LIST FILED BY THE PETITIONER

ANNEXURE-A3. TRUE COPY OF THE PETITION SEEKING TO ACCEPT THE WITNESS LIST AND ISSUE SUMMONS TO THE WITNESSES.

ANNEXURE-A4. TRUE COPY OF THE COMPLAINT LODGED BY THE HUSBAND OF THE PETITIONER BEFORE THE SUB INSPECTOR OF POLICE, KOTHAMANGALAM POLICE STATION.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No.326 of 2015

Dated this the 9th day of February, 2015.

O R D E R

The petitioner herein is the accused in C.C No.314 of 2013 before the Judicial First Class Magistrate Court – I, Kothamangalam. It is a prosecution under Section 138 of the Negotiable Instruments Act. After the examination of the accused under Section 313 Cr.P.C, the petitioner filed an application under Section 311 Cr.P.C for permission to examine her husband as a witness. It is the definite case of the accused that the cheque in question was not in fact executed by her, and that it was in fact handed over as security in some other transaction. To prove this the accused wants to examine her husband as a witness. When such an application came the learned Magistrate expressed some doubt whether the request could be allowed. Thus the learned Magistrate kept the application pending. In such a situation the accused brought this petition for a direction to the court below to pass orders accepting the Annexure A2 witness list. This court called for a report from the learned Magistrate. The learned Magistrate has reported that he has in fact received an application to summon defence witnesses. But when it

came up for consideration the learned Magistrate posed a query regarding examination of the spouse in favour of the other spouse. It is not known why such a query was posed by the learned Magistrate. Section 120 of the Indian Evidence act provides that in criminal proceedings against any person, the husband or wife of such person, shall be a competent witness. Even under Section 122 of the Evidence Act what is protected as privileged communication is only communications in matrimony between the spouse. Here the wife wants to examine her husband to prove her defence that the cheque in question was handed over in some other transaction. The doubt of the learned Magistrate must now stand cleared. The petitioner will have to be allowed to examine her husband as a witness on her side.

In the result, this petition is allowed. The court below is accordingly directed to allow the petitioner to examine her husband as a witness on her side in defence, accepting the Annexure A2 witness list.

P.UBAID,
JUDGE