

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

Crl.MC.No. 337 of 2015 ()

IN CC 348/2010 of JUDICIAL FIRST CLASS MAGISTRATE COURT, KAYAMKULAM

PETITIONER(S)/COMPLAINANT:

**D CHANDRABABU AGED 49 YEARS
S/O.DIVAKARAN
KULATHINTEKIZHAKKETHIL VERUVALLI BHAGOM MURI
KEERIKKAD VILLAGE, KARTHIKAPALLY TALUK
KAYAMKULAM-690 572.**

BY ADV. SRI.S.VISHNU

RESPONDENT(S)/ACCUSED:

**1. AJIKUMAR
TC 51/1750, NEMOM TALUK
THIRUVANANTHAPURAM-695 020 (PROGRAMME STAFF
KIRAN TV-AN ENTERTAINMENT CHANNEL OF SURYA T.V.
THIRUVANANTHAPURAM).**

**2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.**

**R1 BY ADV. SRI.K.SHAJ
R1 BY ADV. SRI.SAJJU.S
R2 BY PUBLIC PROSECUTOR SMT. P. MAYA**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06-02-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 337 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE-A. TRUE COPY OF THE CMP NO.6559/2014 IN CC NO.348/2010 FILED BY THE PETITIONER BEFORE THE COURT OF JUDICIAL 1ST CLASS MAGISTRATE, KAYAMKULAM.

ANNEXURE-B. TRUE COPY OF THE CMP NO.6558/2014 IN CC NO.348/2010 FILED BY THE PETITIONER BEFORE THE COURT OF JUDICIAL 1ST CLASS MAGISTRATE, KAYAMKULAM.

ANNEXURE-C. TRUE COPY OF THE ORDER DATED 25/10/2014 IN CMP NO.6558/2014 IN CC NO.348/2010 OF THE COURT OF JUDICIAL 1ST CLASS MAGISTRATE, KAYAMKULAM.

ANNEXURE-D. TRUE COPY OF THE ORDER DATED 25/10/2014 IN CMP NO.6559/2014 IN CC NO.348/2010 OF THE COURT OF JUDICIAL 1ST CLASS MAGISTRATE, KAYAMKULAM.

ANNEXURE-E. TRUE COPY OF ADVOCATE COMMISSION REPORT FILED BY S.JEEVAKUMAR, ADVOCATE IN MC NO.30/2011 IN THE COURT OF JUDICIAL 1ST CLASS MAGISTRATE, KAYAMKULAM.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No. 337 of 2015

Dated this the 6th day of February, 2015.

O R D E R

The petitioner herein is the complainant in C.C No. 348 of 2010 of the learned Judicial First Class Magistrate, Kayamkulam. The first respondent herein is being prosecuted on a charge under Section 497 IPC. During trial the petitioner made an application before the learned Magistrate for permission to examine some witnesses including an Advocate Commissioner. The request to examine the Advocate Commissioner was rejected by the learned Magistrate by order dated 25.10.2014 in C.M.P No.6559 of 2014. The petitioner now wants to mark the Commissioner's report in M.C No.30 of 2011 as a very material document to prove the exact condition of the house wherein the alleged incident happened. It appears that the complainant believes that the best and effective way of proving the condition of the house wherein the alleged incident happened, is to examine the Advocate Commissioner who inspected the said house in another proceeding. I do not know why the request was disallowed by the learned Magistrate. Purpose of examination is not prove the alleged incident, or something

connected with the incident. The defence case appears to be that nobody could have witnessed the alleged incident of adultery in the special condition of the house. But the complainant is confident that he can very well prove his case that anybody could have witnessed the alleged incident of adultery committed in the house. If he is so confident, and if that can be properly and legally proved, that evidence cannot be shut out. If the complainant believes that the proper and legal way to prove his case effectively is by examining the Advocate Commissioner, and marking the report submitted by him in an earlier proceeding, it can be allowed, of course subject to the relevancy or admissibility which the learned Magistrate will have to decide.

In the result, this petition is allowed. The impugned order disallowing the request to examine Advocate Commissioner as witnesses is hereby set aside, and the court below is hereby directed to grant an opportunity to the complainant (petitioner) to examine the Advocate commissioner.

P.UBAID,
JUDGE