

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

Crl.MC.No. 520 of 2015 ()

(CMP.NO.32/2015 IN M.C.NO.9/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
KALADY)

PETITIONER/PETITIONER:

JESNA, AGED 23 YEARS,D/O.JOSE,
THOMMANA, MOTHIRAKANNI DESAM,
PARIYARAM VILLAGE, MUKUNDAPURAM TALUK,
THRISSUR.

BY ADVS.SRI.K.SHAJ
SRI.SAJJU.S
SRI.RENJIT GEORGE
SMT.ANJU MOHAN
SRI.S.K.SUJITH KRISHNA
SRI.S.VISHNU (ARIKKATTIL)

RESPONDENT(S)/RESPONDENTS:

1. DEEPAK VARGHEESE, AGED 29 YEARS,
S/O.VARGHESE, PADINJAREPURAICAL HOUSE,
VELLAROPPILLY DESAM, CHOWARA VILLAGE,
ALUVA TALUK- 683 101.
2. ALPHONSA,AGED 58 YEARS,
PADINJAREPURAICKAL HOUSE, VELLARAPILLY DESAM,
CHOWARA VILLAGE, ALUVA TALUK -683 101.
3. VARGHESE,AGED 62 YEARS,
S/O.GEORGE PADINJAREPURAICKAL HOUSE,
VELLARAPILLY DESAM, CHOWARA VILLAGE,
ALUVA TALUK - 683 101.
4. ROOPAK, AGED 23 YEARS,
S/O.VARGHESE, PADINJAREPURAICAL HOUSE,
VELLAROPPILLY DESAM, CHOWARA VILLAGE,
ALUVA TALUK - 683 101.
5. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

R1TO R3 BY ADVS. SRI.A.JAYASANKAR
SRI.C.V.MANUVILSAN
SRI.MANU GOVIND
R5 BY PUBLIC PROSECUTOR SRI.JIBU P. THOMAS

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 03-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEX A1:** THE TRUE COPY OF THE M.C.NO.9/2014 FILED SECTION 12 OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005.
- ANNEX A2:** THE CERTIFIED COPY OF THE OBJECTION FILED BY THE RESPONDENTS 2 AND 3 IN M.C. NO.9/2014 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KALADY.
- ANNEX A3:** THE TRUE COPY OF THE CMP NO.32/2015 IN M.C NO.9/2014 FILED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KALADY.
- ANNEX A4:** THE CERTIFIED COPY OF THE ORDER DATED 6/1/2015 IN CMP NO.32/2015 IN M.C NO.9/2014 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KALADY.

RESPONDENT(S)' ANNEXURES:

NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

B.KEMAL PASHA, J.

Crl.M.C.No.520 of 2015

Dated this the 3rd day of March, 2015

ORDER

The challenge is with regard to order dated 6.11.2015 passed by the Judicial First Class Magistrate's Court, Kalady in C.M.P. No.32 of 2015 in M.C. No.9 of 2014.

2. The petitioner's evidence was closed in the matter and the evidence in chief examination of one of the respondents, as RW1 was recorded. After the chief examination, the matter was deferred for the cross-examination of RW1. At that point of time, the aforesaid C.M.P. was filed under Section 311 of Code of Criminal Procedure for recalling PW1 for further examination, as the petitioner has got a case that the objections, allegedly filed by the said respondents, could not be perused by the petitioner. The court

below has taken a view that as the petitioner was represented by the counsel, he should have been aware of the objections. Based on that reasoning, the request was turned down through the impugned order.

3. Heard the learned counsel for the petitioner and the learned counsel for respondents 1 to 4.

4. The learned counsel for the petitioner has pointed out that the petitioner had to obtain a certified copy of the objections from the court and no copy was served on the learned counsel for the petitioner at the time of the filing of objection. It has been further pointed out that the petitioner was of the view that no objection was filed. When the petitioner has come to know about it, the petitioner wanted to explain with regard to which PW1 had to be recalled to be examined.

5. It seems that the court below could have permitted the further examination of PW1 in the matter, when the petitioner has

got a case that respondents did not serve a copy of the objections on her, the court below ought to have allowed the same.

6. In the result, this Crl.M.C. is allowed. The impugned order is set aside. The court below shall grant one more opportunity to PW1 to get her examined further in the matter.

Sd/-
B.KEMAL PASHA,
JUDGE

dl

// TRUE COPY //

PA to Judge