

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

Crl.MC.No. 620 of 2015 ()

**C.MP. NO.44/2015 IN CC. NO.688/2012 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT-II, THAMARASSERY.**

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PETITIONER/COMPLAINANT:

**NEESHMA M.T., AGED 21 YEARS,
D/O.LATE SADANANDAN, ADIYASSERY HOUSE,
NAYARKUZH P.O., N.I.T (VIA), KOZHIKODE DISTRICT.**

**BY ADVS.SRI.P.V.KUNHIKRISHNAN,
SRI.P.V.ANOOP.**

RESPONDENTS/ACCUSED & STATE:

- 1. SINEESH P.C., AGED 30 YEARS,
S/O. CHANDRAN, CHEMBAKKAYIL HOUSE,
MUTHALAM P.O., KOZHIKODE DISTRICT- 673 602.**
- 2. SUMATHI P.K., D/O.KORAPPAN,
CHEMBAKKAYIL HOUSE, MUTHALAM P.O.,
KOZHIKODE DISTRICT- 673 602.**
- 3. CHANDRAN, AGED 62 YEARS,
S/O. UNNICHYOI, CHEMBAKKAYIL HOUSE,
MUTHALAM P.O., KOZHIKODE DISTRICT -673 602.**
- 4. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI -682 031.**

**R1 TO R3 BY ADV. SRI.K.A.SALIL NARAYANAN.
R4 BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS.**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 17-03-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- | | |
|-------------------|--|
| ANNEXURE A | TRUE COPY OF THE COMPLAINANT DATED 30-07-2012 IN C.C NO. 688/2012 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, THAMARASSERY. |
| ANNEXURE B | TRUE COPY OF THE PETITION DATED 08-01-2015 FILED BY THE PETITIONER ALONG WITH THE DOCUMENT LIST AND WITNESS LIST. |
| ANNEXURE C | TRUE COPY OF THE ORDER DATED 17-01-2015 IN C.M.P NO. 44/2015 IN C.C NO. 688/2012 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, THAMARASSERY. |

RESPONDENT'S ANNEXURES:- **NIL.**

//TRUE COPY//

P.S. TO JUDGE

rs.

B.KEMAL PASHA, J.

.....
CRL. M.C. No.620 of 2015

.....
Dated this the 17th day of March, 2015

ORDER

The complainant, who was examined as PW1 before the Judicial First Class Magistrate's Court-II, Thamarassery in C.C.688/2012 registered for the offences punishable under Sections 406, 341, 342, 498A and 506(i) read with Section 34 of the Indian Penal Code, is the petitioner herein. The petitioner is challenging the order dated 17.01.2015 passed by the court below in C.M.P.No.44/2015 in C.C.No.688/2012 which was filed under Section 311 of Cr.P.C. seeking an opportunity to recall and further examine PW1 and PW2 for proving some documents and also for examining a few witnesses.

2. It seems that the court below has dismissed the

application through the impugned order mainly on the ground that the documents are not related to the matter in issue in the case and further the petitioner cannot be permitted to fill up the lacunae in the prosecution case.

3. Heard learned counsel for the petitioner, the learned counsel for respondents 1 to 3, and the learned Public Prosecutor.

4. It seems that the petitioner wants to prove some documents relating to purchase of gold, some documents relating to raising of funds in connection with her marriage etc. It cannot be said that those documents are not connected with the matter in issue in this case, especially when an offence under Section 406 IPC is also alleged. It is for the petitioner to prove that sufficient funds were raised for the purchase of gold in connection with her marriage, in order to sustain an offence under Section 406.

5. Further, regarding the filling up of lacunae, it seems that the case before the court below is based on a

private complaint. The husband of the petitioner, who is the first accused, is working as a home guard attached to the Police Station in question and therefore, instead of referring the matter under Section 156(3) Cr.P.C. the petitioner was constrained to proceed with the matter as a private complaint. In such a case, it cannot be said that by permitting the petitioner to adduce further evidence in the matter, the petitioner is attempting to fill up the lacunae. It is for the petitioner to prove her case without any lacuna, when the matter is being proceeded with as a private complaint. The court below ought to have allowed the C.M.P. It seems that the dismissal of the C.M.P. has resulted in substantial miscarriage of justice. Matters being so, such an order is liable to be quashed.

In the result, this CrI.M.C. is allowed and the order dated 17.01.2015 in C.M.P.No.44/2015, as noted above is quashed. C.M.P.No.44/2015 is allowed. The Court below shall recall PW1 and PW2 in the case, and the petitioner

shall be given a reasonable opportunity to adduce such further evidence as prayed for in the C.M.P.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge