

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

Crl.MC.No. 748 of 2015 (E)

**CMP NO.8214/2014 IN C.C.NO. 2232/2009 OF THE JUDICIAL FIRST CLASS
MAGISTRATE COURT - II, THRISSUR**

PETITIONER/COMPLAINANT :-

**M.K.BAHULEYAN, AGED 57 YEARS,
S/O.KESAVAN, SREEKRIPA,
VANIAN LANE,
POONKUNNAM THRISSUR.**

BY ADV. SRI.RAJIT

RESPONDENTS/STATE & ACCUSED :-

**1. STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

**2. AS.MUHAMMED HUSSAIN,
38/2009, S/O.SAIDUMUHAMMED,
ANZAR MANZIL,
THEKKEPOTTA P.O.,
PUTHUKODE, PALAKKAD - 678 687.**

R1 BY SMT.P.SAREENA GEORGE, PUBLIC PROSECUTOR

**R2 BY ADVS. SMT.REENA ABRAHAM
SRI.C.SANKUNNY**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
19-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 748 of 2015 (E)

APPENDIX

PETITIONER(S)' EXHIBITS :-

**ANNEXURE A :- TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER
BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT NO.II,
THRISSUR.**

**ANNEXURE B :- TRUE COPY OF THE APPLICATION FILED UNDER SEC. 311 CR.PC.
WHICH IS NUMBERED AS CMP. NO.8214/2014 IN CC.2232/2009
DATED 12.12.2014.**

**ANNEXURE C :- TRUE COPY OF THE ORDER DATED 01.01.2015 IN CMP NO.8214/2014
IN CC. NO.2232/2009 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT NO.II, THRISSUR.**

RESPONDENT(S)' EXHIBITS :- NIL

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//TRUE COPY//

P.A. TO JUDGE

P.UBAID, J.

Crl.M.C.No.748 of 2015

Dated this the 19th day of February, 2015

ORDER

The petitioner herein is the complainant in C.C.No.2232/2009 of the Judicial First Class Magistrate Court-II, Thrissur, which is a prosecution brought under Section 138 of the Negotiable Instruments Act. The case of the complainant is that the cheque in question was issued by the accused in discharge of a liability under an agreement for sale. The accused elaborated everything during trial, including every agreement. By way of defence evidence, the petitioner herein made an application under Section 311 Cr.P.C. to examine the witnesses to the alleged agreement for sale. The learned Magistrate dismissed the said CMP No.8214/2014 on 01.01.2015 on the ground that the present application is part of a protracting tactics. The said order is under challenge, and it is sought to be set aside.

2. On hearing both sides, I find that the petitioner's application was not properly and legally considered by the trial court. This is a case where the cheque in question was issued in the discharge of a liability under a document. The accused has denied everything including the said document. He has also

denied execution of the cheque in question. With the object of proving the original transaction, which led to the issuance of the cheque in dispute, the complainant wanted to examine the material witnesses, to the alleged agreement for sale. When proof of the original transaction is necessary to prove the issuance of the cheque in question, the witnesses to the agreement will have to be examined. It appears that the petitioner's request was mechanically considered by the learned Magistrate.

In the result, this petition is allowed. The impugned order in CMP No.8214/2014 will stand set aside. The Court below will restore the application, and issue summons to the witnesses as requested.

Sd/-
P.UBAID
JUDGE

rkj

//TRUE COPY//

P.A. TO JUDGE