

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

Cr1.MC.No. 854 of 2015

AGAINST THE ORDER IN C.M.P NO.14573/2014 IN C.C NO.410/2010 OF
THE JUDICIAL FIRST CLASS MAGISTRATE COURT I, HOSDURG

CRIME NO. 38/2010 OF RAJAPURAM POLICE STATION , KASARGOD

PETITIONERS/ACCUSED NOS.1, 3 TO 5:

1. KUNHATH @ KUNHI MUHAMMED, AGED 36 YEARS,
S/O.ABU, DEVARKOLLI, KOINADU,
MADE VILLAGE, SULLAIA, DAKSHINA KANNADA,
KARNATAKA.
2. A.R.KUMAR, AGED 31 YEARS,
S/O.RAMASWAMI, DEVARKOLLI, KOINADU,
MADE VILLAGE, SULLIA, DAKSHINA KANNADA,
KARNATAKA.
3. RAJENDRAN.N.I. @ CHIRRATHAMBI, AGED 27 YEARS,
S/O.DEVARKOLLI, KOINADU, MADE VILLAGE,
SULLIA, DAKSHINA KANNADA, KARNATAKA.
4. S.SUBRAMANIAN @ MANI, AGED 29 YEARS,
S/O.SHANKARAN, DHARMATHADUKKA, KAMMADI,
PANATHADY GRAMAM, KASARAGOD DISTRICT.

BY ADV. SRI.A.ARUNKUMAR

RESPONDENT/COMPLAINANT/STATE:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM 682 031.

BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 11-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 854 of 2015

APPENDIX

PETITIONERS' ANNEXURES:

ANNEXURE A1: COPY OF THE FIR IN CRIME NO.38/2010 OF RAJAPURAM
POLICE STATION, KASARAGOD DISTRICT.

ANNEXURE AII: COPY OF THE ORDER DATED 21/11/2014 IN C.M.P
NO.13356/2014 IN C.C.410/2010 OF JUDICIAL FIRST CLASS MAGISTRATE
-I, HOSURG.

ANNEXURE AIII: COPY OF THE RECEIPT SHOWING THE REMITTANCE OF
RS.5,000/- DATED 21/11/2014.

ANNEXURE IV: COPY OF THE APPLICATION AS C.M.P NO.14573/2014.

ANNEXURE V: COPY OF THE ORDER DATED 22/1/2015 IN C.M.P
NO.14573/2014 IN C.C. NO.410/2010 OF JUDICIAL FIRST CLASS
MAGISTRATE I, HOSDURG.

ANNEXURE VI: COPY OF THE PROCEEDING PAPER IN C.C. NO.410/2010 ON
THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE-I, HOSDURG.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

ab

P.UBAID, J.

Crl.M.C No.854 of 2015

Dated this the 11th day of February, 2015

O R D E R

The petitioners herein are the accused Nos.1 and 3 to 5 in C.C No.410/2010 of the Judicial First Class Magistrate Court I, Hosdurg. The prosecution evidence in the said case stands closed. Some material witnesses examined as PW3 to PW7 were not cross examined by the learned counsel for the accused. During trial, an application was made on their behalf under Section 311 of the Code of Criminal Procedure to recall PW3 to PW7 for cross examination. The said application was allowed on payment of cost ₹1000/- each. The petitioners deposited the amount, and accordingly summons was issued to the witnesses. When the witnesses appeared on summons, on 17.12.2014 the learned counsel for the accused was not ready to cross examine them. The witnesses were accordingly discharged by the learned Magistrate. The case proceeded for examination of the other witnesses. When the case came up for examination of accused under Section 313 of the Code of Criminal Procedure, the petitioners made a second application under Section 311 of the Code of Criminal Procedure to recall PW3 to PW7. The said application filed as C.M.P No.14573/2014 was dismissed by the learned Magistrate on 22.1.2015 on the ground that the attempt of the defence is to win over

the witnesses. The said order is under challenge, and is sought to be set aside.

2. On hearing both sides I find that the request of the petitioners can be allowed on conditions. The petitioners have already deposited ₹5,000/- towards cost. This will have to be paid to the witnesses who once came in court. If they are again to be summoned for cross examination they will have to be paid adequately by way of cost. The learned counsel submits that the petitioners are ready to make reasonable payment of cost. The witnesses will have to come from the far away places in the State of Karnataka. I feel that the petitioners can be directed to pay a further cost of ₹1,500/- each to the witnesses for recalling them for the second time.

In the result, this Criminal Miscellaneous Case is allowed. The court below is hereby directed to permit the petitioners to recall PW3 to PW7, on deposit of a total amount of ₹7,500/- for payment to the witnesses (₹1,500/- each). Summons will be issued only if deposit is made within 15 days from this date. Otherwise the request will stand disallowed.

**P.UBAID
JUDGE**

ab