

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

Crl.MC.No. 989 of 2015 ()

CRIME NO. 203/2009 OF PERINGOME POLICE STATION , KANNUR

PETITIONER(S)/1ST ACCUSED:

**NARAYANAN AGED 57 YEARS
S/O.GOVINDAN, NADUVILATH HOUSE, ALAPPADAMB AMSOM
MANJAPARAMB, KANNUR DISTRICT.**

BY ADV. SRI.I.V.PRAMOD

RESPONDENT(S)/COMPLAINANT & STATE:

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

R BY PUBLIC PROSECUTOR SMT. P. MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 10-03-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 989 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A1- A TRUE COPY OF THE RELEVANT PAGES CHARGE IN CRIME NO.203/2009 DATED 16.9.2009.

ANNEXURE A2- A TRUE COPY OF THE ORDER DATED 20.8.2014 IN CMP NO.4367/2014 OF JFCM, PAYYANNUR.

ANNEXURE A3- A TRUE COPY OF THE ORDER DATED 4.12.2014 IN CMP NO.7288/2014 OF JFCM, PAYYANNUR.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No. 989 of 2015

Dated this the 10th day of March, 2015.

O R D E R

The petitioner herein is the first accused in C.C No. 715 of 2009 of the Judicial First Class Magistrate Court, Payyannur. During trial, when the case came up for the examination of CW 13, the petitioner made an application to defer the examination of the witness on the ground that prejudice will be caused to him, if such examination is completed without and before obtaining the report of comparison from the expert. In fact, the petitioner wants to prove his plea of alibi. The document sent for comparison is a document certifying his presence somewhere on the relevant date. The learned Magistrate dismissed the said application on the ground that the document which the accused would rely on is not at all required for completing the cross examination of the Investigating Officer. The said order dated 4.12.2014 in C.M.P No.7288 of 2014 is under challenge. On hearing both sides I find this Crl.M.C need not now proceed because the petitioner can very well adduce whatever evidence he wants to adduce, by way of defence when

prosecution evidence is closed, and he is called upon to enter on his defence. When he is required by the court to adduce his own evidence, the petitioner can make necessary application under Section 243(2) Cr.P.C, and if necessary the Investigating Officer can be recalled, if by the time the report of comparison is received. Anyway, what is attempted by the petitioner is to enter on his defence of alibi, which cannot be now considered. Of course, he can bring out necessary materials from the witnesses examined by the prosecution. The accused can produce the materials on his side, and if felt necessary even the prosecution witnesses can be recalled under Section 243(2) Cr.P.C, if such a course is absolutely necessary for a just decision, by the trial court. I find that this Crl.M.C can be closed without prejudice to the right of the petitioner to make necessary application and produce necessary documents as part of his defence evidence, when called upon under Section 243 Cr.P.C.

Accordingly, this Crl.M.C is closed without prejudice to the right of the petitioner to move under Section 243 (2) Cr.P.C to prove his defence of alibi.

P.UBAID,
JUDGE