

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

CrI.MC.No. 1429 of 2015 ()

AGAINST THE ORDER IN CRMP 1186/2015 IN S.T. NO.408 OF 2012 of J.M.F.C.-I,
CHERTHALA DATED 07-02-2015

PETITIONER(S)/ACCUSED:

VINOD, VINAI VIHAR
KRUPPAMKULANGARA PO, CHERTHALA

BY ADV. SRI.B.PRAMOD

RESPONDENT(S)/COMPLAINANT & STATE:

1. K.P. GIREESHKUMAR
GEETHA BHAVAN, CMC -12 BEHIND X-RAY HOSPITAL
CHERTHALA
2. STATE OF KERALA REP.
BY THE PUBLIC PROSECUTOR, HGIH COURT OF KERALA
ERNAKULAM

R2 BY PUBLIC PROSECUTOR SMT.P.MAYA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 1429 of 2015

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE-I: TRUE COPY OF THE COMPLAINT IN S.T. NO.408 OF 2012 OF J.F.C.M COURT-I, CHERTHALA

ANNEXURE-II: TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER IN CRL.M.P. NO.1186 OF 2015 IN S.T. NO.408 OF 2012 OF J.F.C.M COURT-I, CHERTHALA

ANNEXURE-III: TRUE COPY OF THE ORDER DATED 7.2.2015 IN CRL.M.P. NO.1186 OF 2015 IN S.T.NO.408 OF 2012 OF J.F.C.M. COURT-I, CHERTHALA.

RESPONDENTS EXHIBITS:

/TRUE COPY/

P.S TO JUDGE

P.UBAID, J.
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**Crl.M.C No.1429 of 2015**  
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Dated this the 18th March 2015

ORDER

The petitioner herein is the accused in S.T No.408 of 2012 of the Judicial First Class Magistrate's Court-I, Cherthala. After his examination under Section 313 of the Code of Criminal Procedure, he made an application as C.M.P.No.1186 of 2015 under Section 311 of the Code of Criminal Procedure to recall the complainant for cross-examination. The learned Magistrate allowed the application on a cost of ₹ 4000/-. The said order dated 7.2.2015 is under challenge. To understand the things that transpired during the trial process, I called for the diary extract of the proceedings from the trial court. The diary extract submitted by the learned Magistrate shows that the complainant's evidence was recorded on 19.12.2014 and on the request of the accused, it was adjourned for cross-examination to 17.01.2015. On 17.01.2015, the complainant was present in court, but the learned counsel for the accused was not in station at that time. On request,

the case was adjourned on a cost of ₹ 500/- to 22.01.2015 for cross-examination of the complainant. On 22.1.2015, the complainant was present in court, but the learned counsel for the accused was not ready to cross-examine the complainant. The cost of ₹ 500/- was paid in open court. Even after making payment of the cost, the counsel submitted that he is not ready to cross-examine the complainant. In such a situation, the learned Magistrate closed the complainant's evidence and posted the case for examination of the accused. The accused was examined under Section 313 Cr.P.C on 31.01.2015 and the case came up for defence evidence on 7.2.2015. On the said date, the accused made application to recall the complainant. Finding some default on the part of the accused, the learned Magistrate allowed the application, on a cost of ₹ 4000/-. On 21.02.2015, the application was dismissed by the learned Magistrate on the ground of failure to pay the amount of cost. I find that cost of ₹ 4000/- was rightly ordered by the learned Magistrate. I find no reason or interference under Section 482 of Cr.P.C. The request of

the accused for adjournment was once allowed by the court on a reasonable cost of ₹ 500/-. Even on the date on which the cost was paid, the learned counsel for the accused submitted that he is not ready to cross-examine the complainant. The complainant was very much present in court on that day. The accused cannot be said to be aggrieved because his application stands allowed by the learned Magistrate. A reasonable cost of ₹ 4000/- was imposed as a condition in view of the default on the part of the accused. He will have to pay the amount of cost ordered by the trial court, if he wants to recall the complainant. Accordingly, this Court finds that this Crl.M.C is liable to be dismissed.

2. The learned counsel for the petitioner now makes a request to grant some time to make payment of the cost awarded by the trial court. In the particular facts and circumstances, I feel that he can be granted some reasonable time to make payment of cost. He is accordingly granted time till 31.03.2015.

In the result, this Crl.M.C challenging the order of the trial court is dismissed. However, the petitioner is granted time till 31.3.2015 to make payment of the cost ordered by the trial court. On the said cost being paid, C.M.P. No.1186 of 2015 will stand revived and the petitioner will be permitted to recall the complainant for cross-examination.

**Sd/-
P.UBAID
JUDGE**

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/True copy/

P.S to Judge