

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

Crl.MC.No. 680 of 2014 ()

IN CC 111/2013 of J.M.F.C. - III, KOCHI

PETITIONER(S):

**SOBHANA VASAN NAIR AGED 45 YEARS
W/O.T.J.VASAN NAIR, RESIDING AT 304
AKARIA ARCADE AYYAPPANKAVU, KOCHI-18
PROPRIETOR OF M/S.NITYASREE TRADE LINKS, 34/2341 A
'SARANYA', 1ST CROSS KENNAYATH ROAD, MAMANGALAM
PALARIVATTOM, KOCHI-25**

**BY ADVS.SRI.S.K.AJAY KUMAR
SMT.PRIYA. H.**

RESPONDENT(S)/RESPONDENTS:

- 1. ZAKARIA AHAMED
MANAGING DIRECTOR
M/S.REVIERAA MARINE PVT. LTD. RESIDING AT PLOT NO.2
PANCHAVADI COLONY, VYTILA KOCHI-682 019
ERNAKULAM DISTRICT.**
- 2. M/S.REVIERA MARINE PVT LTD.
XVII/1373 E, MEHRAB BUILDING
PATEL MARKET ROAD THOPPUMPADY, KOCHI-682 005
REPRESENTED BY ITS MANAGING DIRECTOR MR. ZAKARIA AHAMED
RESIDING AT PLOT NO.2, PANCHAVADI COLONY
VYTILA KOCHI-682 019, ERNAKULAM DISTRICT.**

- 3. STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM**

**R1 & 2 BY ADV. SRI.V.M.KURIAN
R3 BY PUBLIC PROSECUTOR SMT. S. HYMA**

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 680 of 2014 ()

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNX.A1 - TRUE COPY OF THE COMPLAINT BEFORE THE CHIEF JUDICIAL
MAGISTRATE COURT ERNAKULAM IN CC.NO.111/2013**

ANNX.A2 - TRUE COPY OF THE PETITION FILED BY THE 1ST RESPONDENT

**ANNX.A3 - TRUE COPY OF 'A' PROCEEDINGS OF THE COURT BELOW IN THE ABOVE
CASE DATED 31-12-2013**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No. 680 of 2014

Dated this the 25th day of March, 2015.

O R D E R

The petitioner herein is the complainant in C.C No.111 of 2013 of the Judicial First Class Magistrate Court-III, Kochi. It is a prosecution brought under Section 138 of the Negotiable Instruments act. Pending the proceeding, the accused made an application as C.M.P No.1298 of 2013 for a direction to the complainant to produce some documents. He requires not less than 16 documents from the complainant. On 31.12.2013, the learned Magistrate allowed the application, and directed the complainant to produce those documents on 21.1.2014. The said order is under challenge. The impugned order, read along with the diary extract submitted by the learned Magistrate shows that the said application was allowed by the learned Magistrate without properly and effectively hearing the complainant. I find that the complainant is really aggrieved. The complainant wants an opportunity to oppose the application, and he wants the matter to be heard and decided on merits. I find that the petitioner's grievance is quite genuine. The report submitted by the learned Magistrate does

not show that the petitioner herein was in fact effectively heard in the matter, or that he was granted opportunity to oppose the application. When the accused makes an application for an order directing the complainant to produce some documents, the court cannot mechanically allow the application and direct production of documents. The legal and factual aspects involved in the matter will have to be looked into by the trial court.

In the result, this petition is allowed. The impugned order will stand set aside. The petitioner herein is granted opportunity to file objection to C.M.P No.1298 of 2013. The court below will revive C.M.P No. 1298 of 2013 and pass orders afresh on merits according to law, after hearing the petitioner effectively.

Sd/-

P.UBAID,
JUDGE