

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

Cr1.MC.No. 947 of 2013 ()

AGAINST THE ORDER IN ST 210/2012 of J.M.F.C. - III, KOCHI
DATED 26.12.2012

PETITIONER/COMPLAINANT:

P.K.BABU, AGED 52 YEARS,
S/O.KUMARAN, PARAYATTU VEEDU, PATTANAM,
CHITTATTUKARA.P.O., VADAKKEKARA, NORTH PARUR.

BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRA KRISHNAN

RESPONDENTS/ACCUSED/STATE:

1. M.HEERA DEVI, AGED 45 YEARS,
W/O.K.A.SUBRAMANIYAN, HOUSE NO.9/1117, MANTHRAPADAM,
KOCHI-2.

2. STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R1 BY ADV. SRI.T.H.ABDUL AZEEZ
R1 BY ADV. SRI.K.P.MAJEED
R2 BY PUBLIC PROSECUTOR SMT.V.H.JASMINE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
25-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 947 of 2013 ()

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE 1- COPY OF THE APPLICATION SUBMITTED BY THE FIRST RESPONDENT
DATED 22.12.2012 BEFORE THE JUDICAL FIRST CLASS MAGISTRATE COURT-
III, KOCHI.

ANNEXURE II- COPY OF THE ORDER IN CRL.MP NO.1429/2012 IN ST.NO.210/2012
DISPOSED BY THE JUDICAL FIRST CLASS MAGISTRATE COURT-III, KOCHI.

RESPONDENTS' EXHIBITS: NIL

/TRUE COPY/

P.S. TO JUDGE

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K. RAMAKRISHNAN, J.

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Crl.M.C.No.947 of 2013
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Dated this the 25th day of February, 2015.

O R D E R

The complainant/respondent in Crl.M.P.No.1429/2012 in S.T.No.210/2012 on the file of the Judicial First Class Magistrate Court, Kochi has filed this application challenging the order in that application under section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code' for short).

2. It is alleged in the petition that petitioner is the complainant in S.T.No.210/2012 pending before the Judicial First Class Magistrate Court, Kochi. The complaint was filed by him against the first respondent herein alleging the offence under section 138 of the Negotiable Instruments Act on the basis of a cheque said to have been given by her in discharge of the amount mentioned in that cheque. The cheque when presented was dishonoured and in spite of notice issued, she did not pay the amount. So the revision petitioner filed the complaint under section 138 of the Act. The complainant was examined and documents were marked and thereafter the accused was questioned under section 313 of the Code and

though Dws 1 to 3 were examined at the fag end of the trial, Annexure-I application was filed under section 311 of the Code along with the prayer to send Exts.D1, D10 and D11 to compare the handwriting and the learned Magistrate without appreciating the contentions of the accused or her defence and objection of the complainant, mechanically allowed the application which is being challenged by the petitioner by filing this petition.

3. Heard the counsel for the revision petitioner and the counsel for the first respondent and the learned Public Prosecutor.

4. The counsel for the revision petitioner submitted that the application was filed under section 311 of the Code with the combined prayer for reopen the evidence, recall PW1 and compare the handwriting and signature in Exts.D1, D10 and D11 and if necessary, send it for expert opinion and it is not known from the order as to whether both the prayers were allowed or not. Further, the documents produced are photostat copies and some of the documents are not relating to the accused and it relates to some other persons, who were examined as Dws 2 and 3 in respect of whom, complaints have been pending and if any finding has been recorded on those documents, it will

prejudicially affect the right of the complainant in those cases, is the contention raised.

5. The counsel for the first respondent submitted that the petitioner is a money lender used to lend money and obtain blank cheques and used to give passbook and entries will be made in the handwriting of the complainant himself and this fact was denied by him when Dws 1 to 3 were examined and in order to prove the same and bring the truth and prove the defence, the same is to be required. So the court below had considered this aspect and passed appropriate orders.

6. It is an admitted fact that the complainant had filed the complaint on the basis of a cheque said to have been given by the first respondent to the complainant, which was dishonoured for the reason funds insufficient and in spite of notice issued, the amount was not paid. The case of the first respondent was that she had borrowed only ₹10,000/- and a blank signed cheque was obtained and misusing the cheque, the present complaint was filed. Further, she had a case that the complainant is a money lender and used to lend money to several persons and used to collect other security by way of blank signed papers and title documents also. It is true that section 311 of the Code

enables the court to examine any person in court, if the court is satisfied that the evidence of such person is required for proper adjudication of the case. In a criminal case, merely because a combined petition making two prayers as such is not said to be not maintainable. But what is required is that for each prayer, the required court fee stamp has to be affixed. In this case, in Annexure-I it appears that two stamps have been affixed for each prayer. So the submission of the petitioner in this aspect has no merit.

7. It is not clear from the order or from the petition as to whether Exts.D1, D10 and D11 are original documents or Photostat copies. Further, it is not clear from the order as to whether the court below had allowed the application only for recalling PW1 or the prayer for sending documents for expert opinion also has been allowed. Further, it is not seen from the order as to whether any opportunity has been given to the petitioner to file his objection to the petition as well. What is stated in the order is only that the counsel for the complainant submitted that it has been filed only for the purpose of filling up the lacuna. So, under the circumstances, this Court feels that though the provision mentioned is not the required provision

for getting handwriting of the complainant and sending it for expert opinion, that will not stand in the way of considering the application, if court is satisfied that it is required for that purpose. But, at the same time, this Court feels that an opportunity has to be given to the complainant to file his objection regarding the nature of documents produced. Further counsel for the petitioner had read out the deposition of DW1 and a perusal of the deposition of DW1 will go to show that the complainant has not admitted the genuineness of Exts.D1, D10 and D11 as well. Further, there is some merit in the submission made by the counsel for the petitioner that cases are pending in respect of Dws 2 and 3, who were examined to prove Exts.D10 and D11 as well. So, under the circumstances, this Court feels that the order passed by the court below has to be treated as allowing the application for recalling alone and if the first respondent files an application under 73 of the Evidence Act for collecting handwriting of the complainant for comparison by the court or send it for expert opinion, then the court below shall consider that application after giving opportunity to the complainant to file his objection regarding the documents, then pass appropriate orders in that application.

If the accused files an application under section 73 of the Evidence Act for the above said purpose, after giving an opportunity to the complainant to file objection, the learned magistrate shall pass appropriate orders in that application within three weeks from the date of filing of the application and if the court is satisfied that the document will have to be sent for expert opinion, fix the time in getting expert opinion also. So that, the delay in disposal of the case can be avoided.

With the above observations, the petition is allowed and disposed of accordingly.

Sd/-

K. RAMAKRISHNAN, JUDGE.

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/true copy/

P.S to Judge

