

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

**WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937**

**Crl.MC.No. 2181 of 2015 ()**

**CMP. NO.2169/2015 IN C.C. NO.1114/2011 OF JUDICIAL FIRST CLASS  
MAGISTRATE COURT, KODUNGALLUR.**

**PETITIONER/ACCUSED:**

**SIDHIQUE K.A.,  
AGED 54 YEARS, S/O.ABDUL RAHMAN,  
KARUKAPPADATH UTHUMMANCHALIL HOUSE,  
ERIYAD VILLAGE AND DESOM, KODUNGALLUR,  
THRISSUR DISTRICT.**

**BY ADVS.SRI.S.RAJEEV,  
SRI.K.K.DHEERENDRAKRISHNAN,  
SRI.V.VINAY.**

**RESPONDENTS/STATE/COMPLAINANT:**

**1. STATE OF KERALA,  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM-682 024.**

**2. RASHEED,  
AGED 57 YEARS, S/O.ABDUL RAHMAN,  
KARUKAPPADATH UTHUMMANCHALIL HOUSE,  
EDAVILANGU VILLAGE, KODUNGALLUR TALUK,  
THRISSUR DISTRICT-680 664.**

**R1 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE.  
R2 BY ADVS. SRI.P.MOHANDAS (ERNAKULAM),  
SRI.ANOOP.V.NAIR,  
SRI.S.VIBHEESHANAN.**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 03-06-2015, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:**

**rs.**

**APPENDIX**

**PETITIONERS' ANNEXURES:**

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|-----------------------|----------------------------------------------------------------------------------------------------------------------|
| <b>ANNEXURE I.</b>    | <b>COPY OF THE NOTICE DATED 25.10.2011 ADDRESSED TO THE PETITIONER ISSUED AT THE INSTANCE OF THE 2ND RESPONDENT.</b> |
| <b>ANNEXURE II.</b>   | <b>COPY OF THE REPLY SENT AT THE INSTANCE OF THE PETITIONER DATED 25.11.2011.</b>                                    |
| <b>ANNEXURE III.</b>  | <b>COPY OF THE COMPLAINT DATED 03.12.2011 INSTITUTED BY THE 2ND RESPONDENT.</b>                                      |
| <b>ANNEXURE IV.</b>   | <b>COPY OF THE CROSS EXAMINATION OF THE COMPLAINANT DATED 18.01.2014.</b>                                            |
| <b>ANNEXURE V.</b>    | <b>COPY OF THE RECEIPT DATED 06.08.2011 ISSUED BY THE 2ND RESPONDENT IN FAVOUR OF THE PETITIONER.</b>                |
| <b>ANNEXURE VI.</b>   | <b>COPY OF THE CRLMP NO.2169/15 DATED 25.02.2015 FILED BY THE PETITIONER BEFORE THE JFCM, KODUNGALLUR.</b>           |
| <b>ANNEXURE VII.</b>  | <b>COPY OF THE ARGUMENT NOTE DATED 02.03.2015 SUBMITTED BY THE COUNSEL FOR THE PETITIONER.</b>                       |
| <b>ANNEXURE VIII.</b> | <b>COPY OF THE ORDER DATED 02.03.15 IN CMP NO.2169/2015 IN CC. 1114/2011 OF THE JFCM, KODUNGALLUR.</b>               |

**RESPONDENTS' ANNEXURES:**

**NIL.**

**//TRUE COPY//**

**P.S. TO JUDGE**

**rs.**

ALEXANDER THOMAS, J.

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Crl.M.C.No.2181 Of 2015  
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Dated this the 3<sup>rd</sup> day of June, 2015.

ORDER

The order under challenge in this Crl.M.C is Annexure-VIII order dated 2.3.2015 in Crl.M.P.No.2169/2015 in C.C.No.1114/2011 by which the petitioner's application (Annexure-VI) for sending Ext.D3 document for handwriting expert was rejected by the court below. The said impugned order reads as follows:

“This petition is filed by the counsel for accused for sending Ext.D3 document to a hand writing expert.

2. Complainant filed objection.

3. Heard both sides. Learned counsel for the complainant submitted that Ext.D3 document not shown at the time of examination of the complainant. Hence petition dismissed at this stage.”

2. It is pointed out by the petitioner that the findings in Annexure-VIII order that Ext.D3 document was not shown at the time of examination of the complainant is absolutely incorrect and wrong and that the entire factual foundation for issuance of the impugned order is based on such factual wrong premise and therefore the order is liable to be interdicted with.

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3. It is further pointed out that the petitioner had submitted Annexure-VI application as per Crl.M.P.No.2169/2015 in C.C.No.1114/2011 on the file of the Judicial First Class Magistrate Court, Kodungallur making the aforementioned prayer. It is further pointed out that the petitioner had submitted Annexure-VII argument note wherein it is inter alia stated as follows:

'The accused had a definite case from Ext.P5 reply notice on wards that Ext.P1 cheque had been handed over as a security for a transaction. The amount covered by the said cheque was later paid off and a cash receipt for the same had been issued by the complainant. This aspect was put to the complainant and shown the receipt Ext.D3 to him at the time of cross examination. The question and answer in page 9 of his deposition is “വസ്തുവഹകൾ തീറ്റുകൊടുത്ത ശേഷം നിങ്ങൾ 6/8/2011 തീയതി ബാക്കി തുക കൈപ്പറ്റുകയും ആയതിന് ഒരു രസീത് എഴുതി ഒപ്പിട്ട് കൊടുത്തു എന്നു ഓടി രസീതാണ് കാണിക്കുന്നതെന്നും പറയുന്നു. ഞാൻ എഴുതിയ രസീതിൽ ഒപ്പിട്ടിട്ടില്ല” (A) There after he has clearly stated that എന്നെ കാണിച്ച രസീതിലെ ഒപ്പ് Hand Writing Expert ന് അയച്ചുകൊടുക്കുന്നതിൽ തടസ്സമില്ല. So the complainant has no objection in sending it to Hand writing expert. When the complainant denies the receipt and the signature it is not marked through him. Thereafter Ext.D3 receipt was marked through DW1. DW1 clearly stated that he saw the complainant signing the receipt Ext.D3 in his presence. But the case of the complainant is that Ext.D3 is a fabricated document.'

It is further pointed out in Annexure-IV, which is the copy of the deposition of the complainant in this case, wherein she has

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unequivocally stated that the receipt in question was shown to the complainant (see page 21 of the paper book).

4. Heard.

5. On a consideration of these aspects, this Court is of the considered opinion that the impugned order requires reconsideration by the court below as the findings stated in the impugned order that Ext.D3 document was not shown to the complainant at the time of examination appears to be incorrect in view of the aforementioned aspects in Annexure-VII argument note and page 9 of Annexure-IV deposition of the complainant.

6. Accordingly, impugned Annexure-VIII order is set aside. Annexure-VI application as per Crl.M.P.No.2169/2015 in C.C.No.1114/2011 shall stand remitted back to the Judicial First Class Magistrate Court, Kodungallur for consideration afresh. Learned Magistrate will pass final orders in the matter within a period of two weeks from the date of production of a certified copy of this order, after affording reasonable opportunity of being heard to both sides. Learned counsel for the petitioner also relies on the decision of the Apex Court in the case Nagappa v. Muralidhar reported in 2008 (3) KLT 158 (SC)

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and decision of this Court in the case Issac Thomas v. State of Kerala reported in 2010 (3) KLT 56. It is open to the petitioner to produce copies of said reported decisions as he would rely on and it is for the learned Magistrate to consider as to whether the legal principles laid down therein are applicable to the facts of this case.

With these observations and directions this Crl.M.C stands finally disposed of.

ALEXANDER THOMAS,  
Judge.

bkn/-