

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

**PRESENT:**

**THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

**WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937**

**CrI.MC.No. 3325 of 2015 ()**  
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**CRL.M.P. NO. 1110/2014 IN SC NO. 471/2007 OF ADDL. SESSIONS COURT-I,  
THIRUVANANTHAPURAM**  
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**PETITIONER/ACCUSED NO.2 :**  
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**SUMESH, AGED 31 YEARS  
S/O. SUNDARESAN, PP XIII 52 C,  
JAWAHAR COLONY, ANAD MURI  
PERINGAMALA VILLAGE,  
THIRUVANANTHAPURAM.**

**BY ADVS.SRI.S.RAJEEV  
SRI.K.K.DHEERENDRA KRISHNAN  
SRI.V.VINAY**

**RESPONDENTS/STATE/COMPLAINANT :**  
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**STATE OF KERALA  
REP. BY PUBLIC PROSECUTOR  
HIGH COURT OF KERALA  
ERNAKULAM -682 031  
(CRIME NO. 167/2004 OF PALODE POLICE STATION  
THIRUVANANTHAPURAM DISTRICT)**

**\*ADDL. R2 IMPEADED**  
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**\*ADDL.R2. ROBINSON  
S/O. THAMPI, BLOCK NO. 14,  
JAWAHAR COLONY, EX-SEVICEMAN COLONY P.O.,  
THIRUVANANTHAPURAM.**

**\*ADDL. R2 IS IMPEADED AS PER ORDER IN CRL.M.A. NO. 5398/2015  
DATED 09/06/2015.**

**R1 BY ADDL.DIRECTOR GENERAL OF PROSECUTION  
SRI.TOM JOSE PADINJAREKKARA  
ADDL. R2 BY ADV. SRI. M. SREEKUMAR**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 10-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**Mn**

**...2/-**

**APPENDIX**

**PETITIONERS' ANNEXURES :**

- ANNEXURE I : COPY OF THE ORDER DATED 26.3.2015 IN CRL.M.C.  
NO. 1652/2015 PASSED BY THIS HON'BLE COURT.**
- ANNEXURE II COPY OF THE PETITION ALONG WITH AFFIDAVIT SUBMITTED  
BY THE PETITIONER BEFORE THE COURT OF SESSIONS,  
THIRUVANANTHAPURAM ON 26.5.2015.**
- ANNEXURE III CERTIFIED COPY OF THE ORDER DATED 26.5.2015 IN CRL.M.P.  
NO. 1110/2015 IN SC NO. 471/2007 PASSED BY THE ADDL.  
SESSIONS JUDGE -I, THIRUVANANTHAPURAM.**

**RESPONDENT'S ANNEXURES : NIL**

**//TRUE COPY//**

**P.S. TO JUDGE**

**Mn**

ALEXANDER THOMAS, J.

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Dated this the 10<sup>th</sup> day of June, 2015.

ORDER

The order under challenge in this case is Annexure-III rendered on 26.5.2015 on Crl.M.P.No.1110/2015 in S.C.No.471/2007 on the file of the Additional Sessions Court-I, Thiruvananthapuram. The accused in the said sessions case had instituted the aforesaid Crl.M.P.No.1110/2015 in the above said sessions case praying to call for certain documents said to be related to the deceased informant in this case. The documents sought to be called for were two bail bonds said to have been executed by the deceased first informant before the Judicial First Class Magistrate Court, Attingal in two criminal cases in which he was arrayed as an accused and Labour Card issued by the Assistant Labour Officer, Nedumangad and the Register containing the card which is said to be the Labour Card with the signature of the said card holder which was claimed to be available with the Assistant Labour Officer, Nedumangad. The application was made primarily in the context of Sec. 233 Cr.P.C enabling the defence to adduce evidence in

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support of their case. The case projected by the defence in this application is that the signature of the first informant is not genuine etc. It is not necessary to go into such details in the matter like this which essentially is one instituted under Sec.482 Cr.P.C conferring inherent powers to this Court. Certain other factual aspects were also dealt with in Annexure-III order, but, advertence to the same may not be really necessary for the present purpose. The court below held that earlier pursuant to the direction issued by this Court in Annexure-I order dated 26.3.2015 in CrI.M.C.No.1652/2015 though the wife of the deceased first informant was allowed to be summoned as a defence witness, the defence did not even prefer to show the impugned First Information Statement to her so as to confront her with signature of her late husband. It is stated in the impugned order by the court below that the FIS was not shown to the widow of the deceased 1<sup>st</sup> informant. The explanation offered to this Court by the learned counsel for the petitioner is that defence had also specifically insisted for summoning the said defence witness primarily also to summon certain documents which were said to have been with her which would contain the signature of her deceased husband that since the said defence witness had not produced any such documents showing the signature of her

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deceased husband the defence thought it fit not to confront her with the FIS as such effort would have been of no utility in the absence of documents with the defence witness containing admitted signature of the deceased 1<sup>st</sup> informant. Be that as it may, the court below held that the case is at the fag end of its final trial and this Court in Annexure-A1 had earlier ordered that there is no question of sending the original FIS to the Forensic Scientific Laboratory for expert examination for comparison of the signature of the 1<sup>st</sup> informant. Further the court below held that no meaningful purpose may be served in summoning any record allegedly bearing the signature of the deceased 1<sup>st</sup> informant and therefore if the documents requested by the defence were called for it will be of no utility in the trial even for the defence and that would amount to protraction of the trial process which is already at the fag end. It is in this view of these aspects, the court below has refused the plea of the accused. One of the accused who is aggrieved by this order come forward to this Court by instituting the above captioned CrI.M.C seeking invocation of this Court's inherent powers under Sec. 482 Cr.P.C.

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2. Heard Sri.S.Rajeev, learned counsel for the petitioner and Sri.Tom Jose Padinjarekkara, learned Additional Director General of Prosecution and Additional State Prosecutor appearing for the 1<sup>st</sup> respondent and Sri.M.Sreekumar, learned counsel appearing for the additional 2<sup>nd</sup> respondent-injured.

3. Sri.S.Rajeev, learned counsel for the petitioner (A3), would submit that the petitioner will undertake before this Court that he will not insist for sending either the documents sought to be summoned or the original of the FIS for Forensic Scientific expert examination in respect of the signatures therein. Though Sec.45 of the Indian Evidence deal with expert evidence, Sec.73 of the Indian Evidence Act provides for comparison of signature, writing or seal with others admitted or proved. Sec.73 of the Indian Evidence reads as follows:

“73. Comparison of signatures, writing or seal with others admitted or proved :- In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.”

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Sri.S.Rajeev, learned counsel for the petitioner, would further undertake on behalf of the petitioner that his limited plea is that the aforementioned documents may be summoned for the limited purpose of the court making a comparison of the signature as envisaged in Sec.73 of the Indian Evidence Act and that if the court below in exercise of its own independent judicial discretion is of the considered opinion that expert comparison of the signature as envisaged under Sec. 45 of the Indian Evidence Act is not called for, then the petitioner will fully accept that position. It is thus pointed out that it is for the court below to make an assessment of the signatures in the requested documents as well as in the original of the FIS as envisaged in Sec.73 of the Act and that it is further undertaken by the petitioner that whatsoever consequences would flow therefrom will be fully accepted by the petitioner. It is further pointed out that since all the other accused have not chosen to challenge the impugned order passed by the court below, they cannot go beyond what has been already ordered by the impugned order or the order passed by this Court in this case.

4. A precious right is conferred on the defence in terms of Sec.233 of the Cr.PC and sub section (3) of Sec.233 mandate that if the accused applies for issue of any process or for compelling the

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attendance of any witness or production of any document or thing, the Judge shall issue such process unless he considers for reasons to be recorded that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. The court below did not have the occasion to consider the prayer of the petitioner in the light of the aforementioned specific undertakings now made by the petitioner as such undertaking was never made before the court below. It is common ground that the stage of Sec.313 question is over and the case is now posted for arguments. The limited prayer is only to requisition of the documents for the limited purpose of Sec.73 of the Indian Evidence Act and for no other purpose and much time may not be taken for this process. It is pointed out that the summoning of the documents like bail bonds sought to be called for is from the immediate neighbouring court and other documents are pertaining to the Assistant Labour Office which is also situated nearby. It is also undertaken by the petitioner that in case if any of the documents are not traceable from the institutions concerned within a period of three weeks from the date of issuance of the summons by the court below in that regard, then the petitioner will not insist for its production thereafter and that the application can be

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treated as dropped. The effect of these undertakings given by the petitioner-accused could not be considered by the court below as these submissions are made for the first time before this Court. The power conferred on this Court is of wide plentitude but the same has to be exercised with due circumspection and caution. The matter related to trial are primarily in the domain and province of the trial court. This Court is of the considered opinion that it is not proper for this Court in the facts of this case to adjudicate the issue in its entirety and then decide the matter and take a decision in substitution of the considered view rendered by the court below. This the Court feels that should be a matter left to the sound discretion of the trial court faced with the difficulties and logistics of sessions trial and that too involving the capital offence under Sec.302 IPC. But, balancing the precious right conferred to the defence under Sec.233(2) Cr.P.C and the logistics of the trial, this Court is still of the opinion that the matter requires reconsideration at the hands of the court below as the court below never had the occasion to consider this matter in the light of the new undertakings made by the petitioner. This stand taken by this court was not seriously opposed by the prosecution or the injured.

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5. Sri.Tom Jose Padinjarekkara, learned Additional Director General of Prosecution and Additional State Public Prosecutor would submit that this Court may insist that in case those documents sought to be summoned are not readily available within a short time, further time should not be permitted in that regard and the trial should recommence from the stage where it was stopped and he would further urge that this Court should specifically direct that in case the court below is reconsidering the matter then the same should be subject to strict enforcement of the undertaking now made by the petitioner and no other contentions shall be entertained by the court below.

6. Sri.M.Sreekumar, learned counsel for the additional 2<sup>nd</sup> respondent (injured) has also no objection to the cause of action.

7. In view of these aspects, the impugned order is set aside and the CrI.M.P.No.1110/215 in S.C.No.471/2007 is remitted back to the Additional Sessions Court-I, Thiruvananthapuram for consideration afresh and to render a decision thereon after reasonable opportunity of being heard to either sides within a short time. The court below would endeavour to take a decision afresh on the matter in the CrI.M.P within an outer time limit of 10 days from the date of receipt of a certified copy of this order. The court below may consider the matter only within the

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limited compass as indicated in this order and if the court below with its wisdom and judicial discretion inclined to allow the plea of the petitioner, then the same should be restricted to the strict undertaking made by the petitioner as recorded above. It is further made clear that since the other accused have not chosen to challenge the impugned order in any manner known to law, they cannot be permitted to advance any new contention other than the one that may lie within the narrow compass as indicated above.

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

ALEXANDER THOMAS,  
Judge.

bkn/-