

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

CrI.MC.No. 3472 of 2015

-----

CMP.1142 OF 2013

IN

ST.51/11, 197/11 AND ST 200/11 OF JFMC-III, KANJIRAPALLY

PETITIONER(S)/ACCUSED:

-----

K.I.RASHEED AGED 51,  
S/O.HAJI IBRAHIM KUTTY, KALLUMKAL HOUSE, KOVILKADAVU  
KANJIRAPALLY.

BY ADVS.SRI.K.A.HASSAN  
SMT.JULIA PRIYA RESHMY

RESPONDENT(S)/COMPLAINANT:

-----

1. STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR  
HIGH COURT OF KERALA-682031.

2. SASURAJ & COMPANY, KANJIRAPALLY,  
REPRESENTED BY ITS PARTNER CHERIAN S.JOSEPH  
S/O.SALI CHERIAN, CHEERANVELIL, KANJIRAPALLY  
KOTTAYAM-686 101.

BY ADV. SRI.BECHU KURIAN THOMAS  
BY PUBLIC PROSECUTOR SRI. GITHESH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
15-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CrL.MC.No. 3472 of 2015

-----

APPENDIX

PETITIONER(S)' EXHIBITS

-----

ANNEXURE 1 : TRUE COPY OF ORDER DATED 28-2-2012 IN  
CRL.M.C.NO.3881/2011.

ANNEXURE 2 : TRUE COPY OF THE CMP.NO.1142/2013 DATED 26-11-2013

ANNEXURE 3 : TRUE COPY OF ORDER DATED 10-12-2013 BY THE JUDICIAL  
FIRST CLASS MAGISTRATE COURT III, KANJIRAPPALLY IN CMP.NO.1142/2013

ANNEXURE 4 : TRUE COPY OF THE MEMO DATED 26-3-2014.

ANNEXURE 5: CERTIFIED COPY OF THE MODIFIED ORDER IN CMP 1142/2013  
DATED 15-5-2015.

ANNEXURE 6 : TRUE COPY OF ORDER DATED 23-9-2011 IN CMP.3220/2011

ANNEXURE 7 : TRUE COPY OF CMP.NO.1196/2013 DATED 10-12-2013.

ANNEXURE 8 : TRUE COPY OF ORDER IN CMP.NO.1196/2013 DATED 10-12-  
2013.

ANNEXURE 9 : TRUE COPY OF PETITION DATED 10-1-2014

ANNEXURE 10 : TRUE COPY OF CMP.NO.182/14 DATED 26-3-2014.

ANNEXURE 11 : TRUE COPY OF ORDER IN CMP.NO.182/2014 DATED 15-5-  
2015.

TRUE COPY

P.S TO JUDGE

**RAJA VIJAYARAGHAVAN.V. J**

-----  
Crl.M.C. 3472 of 2015  
-----

Dated 15<sup>th</sup> July, 2015  
-----

**ORDER**

1. The petitioner is the accused in three cases numbered as S.T.No.51/2011, S.T.197/2011 and S.T.200/2011 on the files of the Judicial Magistrate of First Class-III, Kanjirappally. The said case arose on the basis of a complaint filed by the 2<sup>nd</sup> respondent alleging offence punishable u/s 138 of the Negotiable Instruments Act.

2. All the three cases were jointly tried and after closing the evidence, 313 statement was recorded and the case was posted for hearing. On the date of hearing, C.M.P.1142 of 2013 was filed by the 2<sup>nd</sup> respondent with a prayer to direct the accused/petitioner to produce his admitted signature during the disputed period and to appear before the Court and also to give signature samples for sending the same to the Forensic Science

Laboratory for comparison. As per order dated 10.12.2013 in C.M.P.1142 of 2013, the learned Magistrate allowed the prayer and directed the accused to produce his admitted signatures during the period of issuance of Exts.P7 to P9 cheques and also to give signatures in open Court for sending it to the Forensic Science Laboratory. The petitioner complied with the order on 21.2.2013, but no steps were taken for sending the signatures to the Forensic Science Laboratory. Thereafter, on 26.3.2014, a memo was filed as per which the prayer was to direct the accused to sign cheque leaves similar to that of Ext.P1 using the same kind of ball pen. As per Annexure - 5 order dated 15.5.2015, the learned Magistrate modified the earlier order and allowed the complainant to provide 65 cheque leaves similar to that of Ext.P1 and also to produce ball pens similar to the one using which signature in Ext.P1 was put. The aforesaid order is under challenge.

3. I have heard the learned counsel for the petitioner and also the learned counsel appearing for the 2<sup>nd</sup>

respondent/complainant.

4. It was submitted by the learned counsel for the petitioner that the petitioner had admitted his signature in the three cheques which are kept in Court and in the said circumstances, there was no justification for the Court to direct the accused to put signature in open Court for obtaining comparison.

5. On the other hand, the learned counsel for the 2<sup>nd</sup> respondent has submitted that a defect has crept in Annexure-5 order and the directions have become infructuous. It was submitted by the learned counsel that the signatures and handwritings have already been sent to the handwriting expert and the modified order of the learned Magistrate dated 15.5.2015 in C.M.P.1142 of 2013 has been rendered otiose.

6. In view of the above submissions made by the learned counsel for the petitioner and the learned counsel

appearing for the 2<sup>nd</sup> respondent, Annexure-5 modified order in C.M.P.1142 of 2013 in S.T.51/2011, S.T.197/2011 and S.T.200/2011 is quashed.

Crl.M.C stands allowed as above.

Sd/-

**RAJA VIJAYARAGHAVAN.V.**  
**Judge**

MrCs

//True Copy//