

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

Crl. MC. No. 2626 of 2014 (D)

PETITIONER(S)/PETITIONER NOS.1 & 2/ACCUSED NOS.2 & 5:

- 1. PUSHPAMMA M.R., AGED 51 YEARS,
D/O. REETHAMMA JACOB, 'MAKOM', RAILWAY STATION ROAD,
NEYYATTINKARA P.O. - 695 121,
THIRUVANANTHAPURAM DISTRICT.**
- 2. GLADIS T.A., ALIAS SHINY, AGED 38 YEARS,
W/O. SUUNY JACOB, 'MAKOM',
RAILWAY STATION ROAD, NEYYATTINKARA P.O. - 695 121,
THIRUVANANTHAPURAM DISTRICT.**

**BY ADVS. SRI. JOHNSON ABRAHAM
SRI. S.GOPINATHAN
SRI. NELSON ABRAHAM**

RESPONDENT(S):

- 1. STATE OF KERALA,
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

*** ADDL. RESPONDENT 2 IMPEADED:**

ADDL. RESPONDENT:

- 2. SMITHA STANLEY, D/O. P.J. STANLEY,
PARASSERY HOUSE, MURIKKUMPADAM,
AZHEEKAL P.O., ERNAKULAM - 682 510.**

*** ADDL. RESPONDENT 2 IS IMPEADED AS PER ORDER DATED 14.01.2015 IN
CRL.MA. NO. 9650/2014 IN CRL. M.C. NO.2626/2014.**

**R1 BY PUBLIC PROSECUTOR SMT. SHEEBA. M.T.
ADDL. R2 BY ADV. SRI. K.G.ANIL BABU**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 29-10-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

P.UBAID, J.

=====
Crl.M.C.No.2626 of 2014
=====

Dated this the 29th day of October, 2015

ORDER

The petitioners herein are the accused in C.C.No.115 of 2007 of the Additional Chief Judicial Magistrate Court, Ernakulam. When examination of the defacto complainant as PW1 was midway, the learned Assistant Public Prosecutor incharge of the case filed an application under Section 91 Cr.P.C. to summon some documents. The said application was opposed by the accused. However, the learned Magistrate allowed the said application. Annexure-D is copy of the said order. As summoned, two witnesses appeared in Court. Objection was raised by the petitioners regarding the examination of these witnesses before completing the examination of PW1. The learned Magistrate considered the objection, and passed the Annexure-E proceeding permitting examination of the witnesses. Accordingly, those witnesses were examined as PW2

and PW3, and the documents produced by them were also marked. The accused are aggrieved. Their grievance is that examination of PW2 and PW3 before completing the examination of PW1 is a gross irregularity which would vitiate the whole trial. The petitioners seek orders quashing the Annexure-G order of the Magistrate issuing summons to the witnesses under Section 91 Cr.P.C. The deposition given by PW2 and PW3 are also sought to be quashed.

2. Practically and legally, the issue raised by the petitioners in this proceeding is regarding the correctness, and propriety of a procedure adopted by the learned Magistrate. They allege serious irregularity that would vitiate the whole trial. Whether the procedure adopted by the learned Magistrate will amount to an irregularity cannot be decided in this proceeding. It is further submitted that PW2 and PW3 are not the competent persons to prove the documents produced, or to prove the facts contained therein. This will have to be raised before the learned Magistrate, and the question of acceptability of the evidence given by PW2 and PW3 will be appropriately decided by the learned Magistrate. Now, realising the fact that the grievance regarding irregularity, or illegality in procedure will have to be raised at the right stage, the learned counsel for the petitioners

seeks permission to withdraw this Crl.M.C., without prejudice to the right of the petitioners to raise all these aspects before the learned Magistrate. Whether the evidence given by PW2 and PW3 is acceptable, whether they are competent persons to give evidence, are all matters for decision as part of the process of appreciation of evidence. This will be appropriately considered by the learned Magistrate. The submission made by the learned counsel is accepted, and accordingly the petitioners are permitted to withdraw this proceeding, without prejudice to the right of the petitioners to raise all the legal objections before the learned Magistrate for appropriate consideration and decision.

Accordingly, this Crl.M.C. is dismissed as withdrawn.

Sd/-
P.UBAID
JUDGE

rkj

//TRUE COPY//

P.A. TO JUDGE