

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

Crl.MC.No. 3132 of 2014

**ORDER DATED 03-05-2014 CMP.77/2014 IN ST 162/2010 & 163/2010 OF JUDICIAL FIRST
CLASS MAGISTRATE COURT - III, KOLLAM**
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PETITIONER(S)/COMPLAINANT:

**B.K.RAJEEV. AGED 53 YEARS,
S/O.BALAN PILLAI, BRAINS COLLEGE, KOLLAM,
NOW RESIDING AT CHANDRAGIRI GARDEN, PATTATHANAM,
KOLLAM.**

**BY ADVS.SRI.C.RAJENDRAN
SRI.K.R.RANJITH**

RESPONDENT(S)/ACCUSED & STATE:

- 1. HARIHARAN PILLAI, S/O.SREEDHARAN PILLAI,
THIRUVONAM, SAGARA NAGAR 174,
ULIYACOVIL, KOLLAM - 8.**
- 2. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.**

**R1 BY ADVS. SRI.K.SIJU
SMT.BINDU GEORGE
R2 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
03-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A1. A TRUE PHOTO COPY OF THE PROOF AFFIDAVIT FILED IN BOTH THE CASES.

ANNEXURE A2. TRUE PHOTO COPY OF THE PETITION SHOWING THE PRODUCTION OF THE DOCUMENTS.

ANNEXURE A3. A TRUE PHOTO COPY OF THE PETITION FILED UNDER SECTION 311 OF THE CRIMINAL PROCEDURE CODE.

ANNEXURE A4. A TRUE PHOTO COPY OF THE COMMON ORDER.

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msv/

B.KEMAL PASHA, J.

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Crl.M.C. No. 3132 of 2014

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Dated this the 3rd day of September, 2015

O R D E R

The petitioner is the complainant in S.T.Nos.162/2010 and 163/2010 of the court below for the offence punishable under Section 138 of the N.I.Act. The evidence of the complainant was over. Thereafter, the accused was examined under Section 313 of the Cr.P.C and defence evidence was recorded. At the time of examination of the accused as defence witness, certain documents were produced by the accused all of a sudden and got it marked. Thereafter, the petitioner has filed CMP No.77/2014 before the Court below for reopening the evidence and recalling him for enabling him to explain the contents of the said documents produced and proved by the accused. Through Annexure A4 order, the court below has dismissed the said CMP.

2. Heard the learned counsel for the petitioner and the learned counsel for the 1st respondent.

3. It is the admitted case of the parties that those documents were not produced earlier; whereas, those documents were produced all of a sudden at the time of examination of the accused and those documents were got marked. In such a case, it was a genuine request from the part of the complainant to get himself examined further for enabling him to explain the contents of those documents. Annexure A4 order has resulted in substantial miscarriage of justice and therefore, the same is liable to be set aside.

In the result, this Crl.M.C is allowed and Annexure A4 stands set aside. CMP No. 77/14 stands allowed. The court below shall permit further examination of PW1 for explaining the contents of those documents marked at the side of the defence.

Sd/-
B.KEMAL PASHA, JUDGE

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