

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

Crl.MC.No. 3539 of 2013 ()

(AGAINST ORDER IN CRL.M.P.NO.1659 OF 2012 IN C.C.NO.926 OF 2010 OF THE
COURT OF JUDICIAL FIRST CLASS MAGISTRATE-I, ADOOR)

PETITIONER/ACCUSED:

JAYALAL, AGED 43 YEARS
S/O. JAYADEVAN JAYAPURAM, PERINGANADU, ADOOR
PATHANAMTHITTA.

BY ADV. SRI.K.SHAJ

RESPONDENTS/STATE & RESPONDENT:

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1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-683 031.
 2. SATHYADEVAN, SATHYANIKETHAN,
MELOODU.P.O., ADOOR, PATHANAMTHITTA-689 645.

R1 BY PUBLIC PROSECUTOR SMT.MADHUBEN.M.
R2 BY ADV. SRI.D.KISHORE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
22-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 3539 of 2013 ()

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE.A1. THE COPY OF THE COMPLAINT FILED BY THE SECOND
RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE,
ADOOR.

ANNEXURE.A2. THE COPY OF THE PETITION FILED BY THE COUNSEL FOR THE
ACCUSED AS CRL. M.P. NO. 1659/2012 IN C.C NO. 926/10
BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE-I, ADOOR.

ANNEXURE.A3. THE COPY OF THE ORDER DATED 9-7-2013 IN CRL. M.P. NO.
1659/12 IN C.C. NO. 926/10 OF THE COURT OF THE JUDICIAL
FIRST CLASS MAGISTRATE-I, ADOOR.

RESPONDENTS' EXHIBITS: NIL

// TRUE COPY //

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P.S.TO JUDGE

C.T.RAVIKUMAR, J.

Crl.M.C.No.3539 of 2013

Dated 22nd December,2015

ORDER

The petitioner who is the accused in C.C.No.926 of 2010 on the files of the Court of Judicial First Class Magistrate-I, Adoor filed this petition on being aggrieved by Annexure-A3 order passed by the learned Magistrate. C.C.No.926 of 2010 has been registered on a private complaint filed by the second respondent herein alleging commission of offence by the petitioner herein under Section 138 of the Negotiable Instruments Act. When called upon to adduce evidence the petitioner filed an application for sending a *Kurippu* Book (note book) produced by him for expert opinion. Annexure-A2 is the petition filed by the petitioner herein to call for a handwriting expert's opinion as to the identity or otherwise of the writings in the said book. After hearing both sides the learned Magistrate passed the impugned Annexure-A3 order. The learned Magistrate dismissed the application holding thus:-

"I have perused the *Kurippu* book sought to be send for expert opinion by the accused. It is pertinent to take note that the name or address of any one is not mentioned there in the book. Some

arithmetical entries were seen. The dates mentioned are of the years of 2003, 2004 and 2005 and whether those entries are intended for payment or receipt, in between whom such transactions if any took place, cannot be ascertained. Ext.P1 cheque, the basic document in this case is dated 27.11.2006. The prayer from the part of the accused to send a document which is not authoritative for the expert opinion with respect to the hand writings in it is no way connected with the matter in issue. If the accused has any evidence to adduce with respect to any transaction between him and the complainant, or with respect to the repayment of the amount alleged in the complaint opportunity is open to him for doing so during court of defence evidence. I am of the view that the application is intended only for protracting the trial proceedings. Since the petition lacks any merit, it is liable to be dismissed."

2. I have heard the learned counsel for the petitioner, the learned counsel appearing for the second respondent and also the learned Public Prosecutor.

3. At the very outset, it is to be noted that the recital in paragraph 2 of the impugned order by the learned Magistrate is to the effect that there are no entries in the said book indicating the name of the person who maintains the said book as also the name of the person whose transactions are noted down there. True that, the learned counsel for the petitioner/accused contended that the entries therein were made by the complainant in his own handwriting but, the complainant denied such a suggestion made during his cross examination. It was after

denying the said suggestion that Annexure-A2 application carrying the aforementioned prayer has been filed. A scanning of the impugned order would reveal that the trial court perused the note book, the document described by the petitioner as '*Kurippu Book*'. It is observed by the court below that the said book did not contain the name or address of anyone that is, either that of the petitioner or that of the second respondent. The court further found that apart from the fact that it contained some arithmetical entries it is not discernible from it whether the entries are in respect of payment or receipt and who are the parties involved therein. It is taking into account the conspicuous absence of such quintessential aspects making a document worthy to be sent for expert opinion that the learned Magistrate arrived at the conclusion that a book which is not at all authoritative need not be sent to the expert for an opinion with respect to the handwriting. That apart, it is specifically made clear therein that in case the petitioner got any other evidence with respect to the transaction between himself and the complainant or with respect to any amount repaid by him it would be open to the petitioner to adduce such evidence. After making all such observations it was found that the attempt of the petitioner appears to be one for protracting the proceedings. Accordingly, it was found that the petition lacks merits and it was consequently dismissed.

4. There is no case for the petitioner/the accused therein that the prayer made in Annexure-A2 is one falling within the purview of Section 73 of the Indian Evidence Act, 1872. The learned counsel for the petitioner attempted to bring the issue in question within the purview of Section 5 of the Evidence Act. It is submitted that the issue involved has to be taken as one which is an evidence in respect of a fact in issue. Going by Section 3 of the Indian Evidence Act, the expression 'facts in issue' means and includes, any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows. In the contextual situation, it is also relevant to refer to the definition of 'document'. It means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. From the discussion by the learned Magistrate which remains undisputed before me it is evident that the document in question which is described by the petitioner himself as '*Kurippu Book*' did not contain the name or address of either the complainant or the petitioner/the accused. The learned counsel also admitted the fact that the said '*Kurippu Book*'

contained only some arithmetical entries. The observation made by the learned Magistrate that no specific entry therein which would indicate whether the scribblings are relating payment or receipt is also not disputed before me. In other words, the petitioner/the accused got no case that the book contains specific noting indicating the author of those entries or as to whether it pertains to his transactions with the complainant. When that be the nature of the document described as '*Kurippu Book*' what purpose could be served by obtaining expert opinion with respect to the handwriting and then how it can be treated as an evidence in relation to any fact in issue. In the said circumstances, I am of the view that the learned Magistrate is perfectly justified in arriving at the conclusion that the document is not authoritative and therefore worthless to be sent for expert opinion with respect to the handwritings in it as it is in no way connected with the matter in issue. It is also to be noted that even if it could be ultimately proved on obtaining an opinion that the entries are made in the handwriting of the complainant, in the absence of any clue in the very book itself that it pertains to the very transaction involved in the aforesaid calendar case no evidentiary value could be attached to it. When that be the position, I have no hesitation to hold that the observation made by the learned Magistrate that the attempt of the petitioner was only to

protract the proceedings cannot be said to be one made out of place. The long and short of the discussion is that the petitioner has failed to bring out any illegality or impropriety in the order or an error in law that calls for interference by this Court in invocation of the inherent power under Section 482, Cr.P.C. In the said circumstances, this petition is liable to fail and accordingly, it is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

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