

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

Crl.MC.No. 3379 of 2012

CC 789/2008 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, AMBALAPUZHA.
CRIME NO. 350/2007 OF AMBALAPPUZHA POLICE STATION, ALAPPUZHA.

PETITIONER:

**AMBIKA DEVI, AGED 49,
D/O K.A. UTHAMAN, MANIMANGALAM,
KARUMADI P.O, AMBALAPPUZHA,
ALAPPUZHA DISTRICT.**

BY ADV. SRI.M.A.PRABHU

RESPONDENT(S):

- 1. RATHEESAN, (THE THEN SECRETARY,
SNDP SAKHA YOGAM NO 13)
PADMALAYAM, KARUMADI P.O,
AMBALAPPUZHA, ALAPPUZHA DISTRICT, PIN - 688564.**
- 2. CHELLAPPAN, KESAVA BHAVANAM, KARUMADI P.O,
AMBALAPPUZHA, ALAPPUZHA DISTRICT, PIN - 688564.**
- 3. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HON'BLE HIGH COURT OF KERLA AT ERNAKULAM,
KERALA STATE.**

**R2 BY ADV. SRI.K.ACHANKUNJU
R3 BY PUBLIC PROSECUTOR SMT.MAYA**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 21-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S) ANNEXURES:

- ANNEXURE A1: TRUE COPY OF THE PETITION DATED 20-1-2012 SUBMITTED BY THE PETITIONER/ DEFCTO COMPLAINANT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, AMBALAPPUZHA.
- ANNEXURE A2: TRUE COPY OF THE ARGUMENT SUBMITTED BY THE PETITIONER BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, AMBALAPUZHA WHICH WAS NOT ACCEPTED.
- ANNEXURE A3: TRUE COPY OF THE ORDER DATED 30-08-2010 PRONOUNCED BY THE JUDICIAL FIRST CLASS MAGISTRIC COURT, AMBALAPUZHA IN CMP NO 51/2010 IN C.C NO 789/2008.
- ANNEXURE A4: TRUE COPY OF THE ORDER DATED 17-03-2011 PRONOUNCED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT, AMBALAPUZHA IN CMP NO 1079/2011 IN C.C NO 789/2008.
- ANNEXURE A5: TRUE COPY OF THE ORDER SHEET DATED 08-08-2008 IN C.C NO 789/2008 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, AMBALAPUZHA.
- ANNEXURE A6: TRUE COPY OF THE PETITION DATED 26-08-2011 FILED BY THE PETITIONER BEFORE THE DIRECTOR GENERAL OF PROSECUTION, ERNAKULAM.
- ANNEXURE A7: TRUE COPY OF THE PETITION DATED 31-01-2012 FILED BY THE APP NAMELY GOPAKUMAR IN C.C NO 789/2008 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, AMBALAPUZHA.
- ANNEXURE A8: CERTIFIED COPY OF THE DEPOSITION OF PW5 NAMELY E.M. ANSARI THE ASI PF POLICE, AMBALAPPUZHA IN C.C NO 789/2008 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, AMBALAPUZHA DATED 21-06-2011.
- ANNEXURE A9: TRUE COPY OF THE DEPOSITION OF PW7 NAMELY BINU KUMAR THE S.I PF POLICE, AMBALAPPUZHA IN C.C NO 789/2008 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, AMBALAPUZHA DATED 24-02-2012.
- ANNEXURE A10: TRUE COPY OF THE DEPORISTION OF PW2 THE PETITIONER HEREIN IN C.C. NO 789/2008 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, AMBALAPPUZHA DATED 21-06-2011.

RESPONDENTS'ANNEXURES : NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

B. KEMAL PASHA, J.

.....
CRL. M.C. No. 3379 of 2012
.....

Dated this the 21st day of December, 2015

ORDER

Heard the learned counsel for the petitioner and the learned Public Prosecutor.

2. The defacto complainant in C.C.No.789/08 of the Judicial First Class Magistrate's Court, Ambalapuzha is the petitioner herein. The facts are self-speaking. It is evident that the prosecution was conducted by the earlier Assistant Public Prosecutor callously and carelessly. Dissatisfied with it, an application was filed by the defacto complainant before the court below under Section 301 Cr.P.C. for permitting her to appoint a pleader of her choice for conducting the prosecution. That application was dismissed and the matter was reported to the concerned D.D.P. Consequently, the

earlier Assistant Public Prosecutor was changed and another Assistant Public Prosecutor was appointed. According to the petitioner, the new Assistant Public Prosecutor had filed an application for recalling PW2 for further examination in the light of the documents produced. The petitioner is not satisfied with that alone; the petitioner wants to get the other prosecution witnesses also recalled. The said request has been turned down by the court below.

3. It seems that the petitioner had earlier filed an application under Section 302(1) Cr.P.C. and the same was dismissed by the court below. At the same time, it is open to the petitioner to file an application under the proviso to Section 24(8) Cr.P.C r/w Section 301(2) Cr.P.C. for getting an advocate of her choice appointed for assisting the prosecution. At the same time, it is a fact that such person, who may be appointed, can only assist the learned Assistant Public Prosecutor in conducting the case and with the permission of the court, such pleader so instructed, can

submit written argument after the evidence is closed. Leaving open the said opportunity to the petitioner under the proviso to Section 24(8) read with Section 301(2) Cr.P.C., this Crl.M.C. is disposed of.

4. On getting such an application, the court below shall give an opportunity to the petitioner to appoint the pleader of her choice to assist the prosecution. In case the concerned Assistant Public Prosecutor feels that some more witnesses have to be recalled for explaining the documents, he is free to apply before the court below.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge