

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

Crl.MC.No. 5134 of 2015 ()

CC.NO. 208/2011 OF CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR

PETITIONER/WITNESS :

**DROUPATHI
AGED 78 YEARS, W/O.LATE RAVI CHELLUR,
'GOKLAM', CHEMBUKKAVU, THRISSUR.**

**BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRA KRISHNAN
SRI.V.VINAY**

RESPONDENTS/STATE/COMPLAINANT :

**1. STATE OF KERALA
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM - 682 031.**

**2. MANOJ VADAVATH
S/O.C.RAVEENDRANATH,
CHELUR TOWERS, POOTHOLE
THRISSUR – 680 004.**

**R1 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS
R2 BY ADVS. SRI.R.LAKSHMI NARAYAN
SMT.R.RANJINI
SRI.M.ASHOK KINI**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 11-11-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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Crl.MC.No. 5134 of 2015 ()

APPENDIX

PETITIONER(S)' ANNEXURES :

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| ANNEXURE I- | TRUE COPY OF DISCHARGE SUMMARY ISSUED TO THE PETITIONER WITH DISCHARGE DATED 17.9.2007. |
| ANNEXURE II- | TRUE COPY OF DISCHARGE SUMMARY ISSUED TO THE PETITIONER WITH DISCHARGE DATED 16.11.2007. |
| ANNEXURE III- | TRUE COPY OF THE COMPLAINT IN CC NO.208/2011 DATED 29.10.2014. |
| ANNEXTURE IV- | TRUE COPY OF THE ORDER DATED 4.4.2013 IN CRL.MC NO.1364/12 OF THIS HON'BLE COURT. |
| ANNEXURE V- | TRUE COPY OF THE PETITION SUBMITTED BY THE 2ND RESPONDENT BEFORE THE CHIEF JUDICIAL MAGISTRATE, THRISSUR, ALONG WITH WITNESS SCHEDULE DATED 23.11.2010. |
| ANNEXURE VI- | ORIGINAL SUMMONS ISSUED FROM THE CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR IN CC NO.208/2011. |
| ANNEXURE VII- | TRUE COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER DATED 16.12.2014. |

RESPONDENT(S)' ANNEXURES : **NIL**

//TRUE COPY//

P.A. TO JUDGE

Mn

K.RAMAKRISHNAN, J.

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Crl. M.C. No.5134 OF 2015

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Dated this the 11th day of November, 2015

ORDER

This is an application filed by the petitioner who has been summoned as a witness to quash Annexure VI summons issued to the petitioner to appear and give evidence under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the Code).

2. It is alleged in the petition that the 2nd respondent herein filed a complaint against the 1st accused and others including the present petitioner earlier, alleging offences under Sections 420 465, 466, 468 read with Section 149 of the Indian Penal Code on the allegation that they have induced him to part with money and thereafter forged certain documents and denied payment of amount to him and thereby they have committed the above said offences. After taking sworn statement, the Chief Judicial Magistrate, Thrissur had taken cognizance of the case as CC No.208/2011 against

all the accused persons including the present petitioner who was arrayed as 3rd accused in the case and all the accused including the petitioner challenged the proceedings of taking cognizance of the case against them as Cr.M.C. 1364/2012 and this court by Annexure IV order quashed the proceedings as against the accused Nos.3 to 5 who includes the present petitioner also and found that offence under Sections 466 and 468 of the Indian Penal Code will not lie and at the most offence under Section 420 of the Indian Penal Code alone will lie and quashed the complaint to that extent also as against to all the accused persons.

3. It is thereafter that the 2nd respondent filed an additional witnesses list showing 5 witnesses including the present petitioner as Annexure III and according to the petitioner, without application of mind, court below had issued summons to all the witnesses including the petitioner. According to the petitioner, the examination of petitioner is not required to prove the case of the

complainant and the purpose for which she has been summoned can be achieved by examining other witnesses cited by the complainant himself. Further she is aged 78 years. Since she happened to be the mother of one of the accused who is the Managing Director of the company, as a pressure tactics, she has been summoned as a witness. Since there was no allegation against her regarding her part in the day-to-day administration of the 1st accused company, case against her was quashed. So according to the petitioner no purpose will be served for by examining the petitioner and she prayed for quashing the order which ended in issuing Annexure VI summons.

4. Heard Shri S.Rajeev counsel appearing for the petitioner and Shri.Lakshmi Narayanan counsel appearing for the 2nd respondent and Shri Jibu P. Thomas learned Public Prosecutor appearing for the State.

5. When the application came up for hearing today, the counsel for the petitioner submitted that the case against her was quashed on the ground that she had

no role in the day-to-day administration of the company and there was no allegation regarding the same as well. Further the purpose for summoning her is only to prove as to whether there was any liability for the complainant to the company and for that purpose she need not be examined as that can be elicited from the witnesses Nos. 2 and 3 and the other allegations regarding the involvement of other accused persons can be proved through witness No.5 also. He had submitted that, at this stage, there is no necessity to examine the 1st witness who is the petitioner herein in the additional witness list. If at all, the court requires her presence on a later stage, she can be summoned at the instance of the 2nd respondent.

6. On the other hand, the counsel for the 2nd respondent submitted that in order to prove the case of the complainant, the examination of the present petitioner is also required and her examination is not barred under law as case against has been quashed, his

right to examine that witness cannot be denied at this stage.

7. It is an admitted fact that the 2nd respondent herein filed a complaint against M/s Cheloor Property Development Project Ltd. Thrissur and Others including the present petitioner alleging that 1st accused company is represented by its Managing Partner, 2nd accused and accused Nos. 3 to 5 are its Directors. According to the complainant, the accused persons have committed the offence punishable under Sections 420, 465, 466, 468 read with Section 149 of the Indian Penal Code. The complaint was taken on file earlier against all the accused persons and all the accused persons challenged the order taking cognizance of the case as Cr.M.C.1364/2012 and by Annexure IV order, this court quashed the proceedings against accused Nos.3 to 5 who includes the present petitioner as she has been shown as 3rd accused in the complaint, on the ground that there was no allegation made against them for making them to liable for the

offence alleged along with the first accused company. In the same order, this court has quashed the offence under Section 466 and 468 of the Indian Penal Code also as against all the accused persons and observed that offence under Section 420 of the Indian Penal Code alone will lie and case can be proceeded against accused Nos. 1, 2 and 6 alone for the offence under Section 420 of the Indian Penal Code. It is thereafter while the examination of the witnesses were in progress, the 2nd respondent filed additional witnesses list as Annexure III showing the present petitioner also one of the witnesses to be examined to prove the case of the complainant and Court below has issued summons to witnesses including the petitioner as per Annexure VI summons requiring to be appear to give evidence.

8. It is true that since the petitioner is not an accused and if the complainant wants to elicit certain things regarding transaction with the company and the if it is within the knowledge of the petitioner to elicit those

facts, she can be summoned as witness. But there is only bar to put questions to her so as to incriminate her as an accused to be implicated in this case as on a later stage in view of bar under Article 20 of the Constitution of India. So there is nothing wrong in summoning the petitioner as a witness by the complainant to prove his case, if he is of the opinion that her evidence is also required to prove his case.

9. It is seen from his witness list that the purpose for which witnesses Nos 1 and 4 have to be summoned is to find out whether there was any liability from the complainant to the 1st accused concern and 2nd witness was summoned to prove the same fact as he being the auditor of the 1st accused company. 5th witness is none other than the father of complainant and his power of attorney holder who has personal knowledge about the entire transaction. So for the purpose of eliciting the facts mentioned in the witnesses list, at this stage, it is not necessarily to summon the 1st witness who is the

petitioner herein in the additional witness list as those facts can be elicited from witnesses Nos.2, 3 and 4. The involvement of other accused persons and inducement made also can be elicited from the 5th witness who according to the complainant is aware of all the transactions between the complainant and the accused and he was present at the time when the transaction had taken place. Further it is seen from the documents produced, that the petitioner is aged 78 years now and she is suffering from serious ailments as well. So under the circumstances, this court feels that examination of the present petitioner can be for the time being directed to be kept in abeyance and if the court is satisfied that her examination is not required on examination of the other witnesses cited by the 2nd respondent, then court below is at liberty to dispense with the examination of the present petitioner. If the complainant is not satisfied with the evidence adduced by other witnesses cited and if he satisfies the court below that the examination of the

present petitioner is also required for proving his case, then on making an application for that purpose, court below can consider that and pass appropriate orders in that application accordance with law. Interim order granted is vacated and Crl. M.A.No.7719/2015 is dismissed.

With the above directions and observations the petition is disposed of.

Office is directed to communicate this order to the court below immediately by FAX.

Sd/-

K.RAMAKRISHNAN, JUDGE

SKV