

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

Cri.MC.No. 6399 of 2015 ()

AGAINST ORDER IN MP.13514/2014 IN CC.1153/2012 IF JFCM, KUNNAMKULAM

PETITIONER(S)/ACCUSED:

RAVI, AGED 59 YEARS
S/O.GOPALAN, POOVASSERY HOUSE, PUTHUR DESOM
KAIPARAMBU, THRISSUR DISTRICT.

BY ADV. SRI.RAJIT

RESPONDENT(S)/STATE & COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA AT ERNAKULAM.
2. PRABHAKARAN
S/O.MAKKAPPU, KANDAMPULLY HOUSE, KANDANISSERY VILLAGE
CHOWALLUR DESOM, THRISSUR DISTRICT.

R2 BY ADV. SRI.SANTHEEP ANKARATH
R2 BY ADV. SRI.ARUN MATHEW VADAKKAN
R1 BY PUBLIC PROSECUTOR SMT.MAYA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
27-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 6399 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A- TRUE COPY OF THE COMPLAINT FILED BY THE 2ND RESPONDENT.

ANNEXURE B- TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER
M.P.NO.13514/2014 IN C.C.NO.1153/2012.

ANNEXURE C- TRUE COPY OF THE OBJECTION FILED BY THE COMPLAINANT/2ND
RESPONDENT.

ANNEXURE D- TRUE COPY OF THE ORDER DATED 13.01.2015 IN MP NO.13514/14 IN
CC NO.1153/12 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KUNNAMKULAM.

RESPONDENT(S)' EXHIBITS : NIL

// True Copy //

PA to Judge

B. KEMAL PASHA, J.

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Crl.M.C. No.6399 of 2015 C
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Dated this the 27th day of November, 2015

O R D E R

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Petitioner is the accused in CC No.1153/2012 of the Judicial First Class Magistrate's Court, Kunnankulam. It is a private complaint filed by the complainant alleging an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner. Since the complainant suffers from Alzheimers, his son was examined as PW1 before the court below. According to the petitioner, no income tax return was filed by the complainant showing the amounts in the alleged transaction. It has been brought out in cross-examination that the complainant was running a financial institution with money lending licence and that the complainant was filing returns at the Income Tax Department. The petitioner wants to get the income tax returns for the said period. It was for causing the production

of those documents and the PAN Card etc., Crl.M.P.No.13514/2014 was filed. The court below has dismissed the said petition through Annexure-D order.

2. It seems that the son of the complainant has taken a stand before the court below that the said documents were with the complainant and those documents are not in the possession or power of PW1. Learned counsel for the 2nd respondent has pointed out that the complainant, who is the father of PW1, is suffering from acute Alzheimers and he has no memory at all. The present request of the learned counsel for the petitioner is that in case those documents are not being produced, adverse inference has to be drawn.

3. On hearing either side in the matter, the court below has come to the conclusion that the production of those documents could not be ordered. When those documents were not ordered to be produced, there is no question of any adverse inference. PW1 has opposed the

petition on the ground that those documents are not in his possession or power. Only when it is found that those documents are in the possession or power of PW1, he can be ordered to produce those documents. On passing such an order, in case those documents are not produced, then only adverse inference can be drawn; and not otherwise.

4. In this particular case, the petitioner can prove, if it is correct that no returns were filed, by examining other witnesses of the concerned Department. Therefore, there is no merit in this CrI.M.C. and the same is only to be dismissed, and I do so.

In the result, this CrI.M.C. is dismissed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/27/11

// True Copy //

PA to Judge