

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

Cr1.MC.No. 5439 of 2013 ()

(AGAINST THE ORDER/JUDGMENT IN CC 134/2013 of C.J.M., KOTTAYAM)

PETITIONER(S)/PETITIONER:

AJITH KRISHNAN,
S/O.DIVAKARAN, MECHEERI HOUSE, POOTHAKUZHI P O,
KOTTAYAM

BY ADV. SRI.K.P.SUJESH KUMAR

RESPONDENT(S)/STATE:

STATE OF KERALA,
REP BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
KOCHI-31

R BY PUBLIC PROSECUTOR SAAREENA GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 07-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 5439 of 2013 ()

APPENDIX

PETITIONER(S) ' EXHIBITS

A1:-TRUE COPY OF THE FIR IN CRIME NO 573/2013 DTD 3/5/2013

A2:-TRUE COPY OF DEPOSITION OF PW2 IN CC NO 134/2013 DTD 30/7/2013

A3:-TRUE COPY OF CMP NO 2797/2013 IN CC NO 134/2013 ON THE FILE OF
THE CJM COURT, KOTTAYAM

A4:-CERTIFIED COPY OF ORDER IN CMP NO 2797/13 IN CC NO 134/13 ON THE
FILE OF THE CJM COURT, KOTTAYA, DTD 13/11/2013

RESPONDENT(S) ' EXHIBITS

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NIL

/TRUE COPY/

P.S. TO JUDGE.

P.UBAID, J.

Crl.M.C.No. 5439 OF 2013

Dated this the 7th day of January, 2015

O R D E R

The petitioner herein is the sole accused in C.C.No.134/2013 of the Chief Judicial Magistrate Court, Kottayam. The offence alleged against him is punishable under Section 379 IPC and the case requires a warrant procedure. Pending the trial process, the petitioner made an application under Section 311 of CrI.P.C. to recall a material witness examined by the prosecution as PW2. The learned Magistrate dismissed the application on 30/11/2013 on the ground that a witness cannot be summoned or recalled at the whims and fancies of the accused. The said order in C.M.P.No.2797/2013 is sought to be quashed under Section 482 CrI.P.C.

2. On hearing the learned counsel and on perusal of the impugned order, I find that the petitioner made such an application under Section 311 CrI.P.C. when the trial was midway. Of course, he could have waited till the stage under Section 243(2) of CrI.P.C. No doubt, he will get an

opportunity to adduce defence evidence, and once examination of the accused is over, he will be called upon to enter upon his defence under Section 243 (1) CrI.P.C. If he wants to examine any witness of his own or, if he wants to cross-examine any witness already examined by the prosecution, he can make an application for the said purpose under Section 243(2) CrI.P.C. If such examination of the witness is absolutely necessary for a just decision, the trial court will have to allow the application and recall the witness. Without waiting for the right course at the right stage, the petitioner made application in haste under Section 311 of CrI.P.C. when the trial was midway. I find that without prejudice to the right of the petitioner to make application under Section 243 (2) of the CrI.P.C., this proceeding can be closed.

In the result, this CrI.M.C. is closed without prejudice to the right of the petitioner to make application before the Court below under Section 243 (2) of the CrI.P.C. to recall PW2 as part of defence evidence.

Sd/-

P.UBAID, Judge.

Dpk

/true copy/ PS to Judge.

