

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

Cr1.MC.No. 6623 of 2015

AGAINST THE ORDER DATED 29.9.2015 IN CRL.M.P NO.2539/2015
IN S.C NO.288/2013 ON THE FILE OF THE ADDITIONAL SESSIONS
COURT, ERNAKULAM.

CRIME NO. 216/2002 OF PUTHENVELIKKARA POLICE STATION ,
ERNAKULAM

PETITIONERS/ACCUSED NOS.3 AND 4:

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1. AJI, AGED 37 YEARS,
S/O.AUGUSTINE, PULICKAL HOUSE,
PANJIPATTU BHAGOM,
PUTHENVELIKKARA, NORTH PARAVUR,
ERNAKULAM DISTRICT
 2. LIJITH, AGED 24 YEARS,
S/O JOLLY, KUNJELIPARAMBU VEEDU, PUTHENVEKLIKKARA,
NORTH PARAVUR, ERNAKULAM DISTRICT

BY ADV. SRI.NIREESH MATHEW

RESPONDENT/COMPLAINANT & STATE:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SMT.SHEEBA M.T

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 09-10-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

Crl.MC.No. 6623 of 2015

APPENDIX

PETITIONERS' ANNEXURES:

ANNEXURE A: CERTIFIED COPY OF THE ORDER DT. 29/9/15 IN
CRL.M.P 2539/15 IN SC NO. 288/13 PASSED BY THE COURT OF
ADDL. DISTRICT & SESSIONS JUDGE, ERNAKULAM (FOR THE TRIAL
OF CASES RELATING TO ATROCITIES AND SEXUAL VIOLENCE
AGAINST WOMEN AND CHILDREN

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.6623 of 2015

Dated this the 9th day of October, 2015

O R D E R

The petitioners herein are the accused Nos.3 and 4 in S.C No.288/2013 of the Special Sessions Court for the trial of cases relating to Atrocities and Sexual Violence against Women and Children (Additional Sessions Court), Ernakulam. When the case came up for defence evidence under Section 313 Cr.P.C, the petitioner filed an application as C.M.P No.2539/2015 to recall the defacto complainant, examined as PW1, who could not be cross examined by the learned counsel for the petitioners. The learned trial judge dismissed the application on 29.9.2015. The said order is sought to be set aside, and the petitioners seek an opportunity to recall the the defacto complainant for cross examination.

2. On hearing both sides, and on a perusal of the impugned order, I find that the application was mechanically dismissed by the learned trial judge. True, it is, that on 20.11.2014 the victim was not cross examined, and the case was

adjourned to 19.1.2015. On that date, these petitioners were well present, but their counsel could not cross examine the complainant due to some reasons of his own. Adjournment was sought from the side of the petitioners. The counsel representing the counsel for the petitioners made submissions, explaining the difficulties of the learned counsel. How even, the learned trial judge recorded "no cross". Thereafter the evidence was closed, and examination of the accused was also done by the learned trial judge. The learned judge perused the proceedings, and just dismissed the application on the ground that inspite of opportunities, the learned counsel for the petitioners did not opt to cross examine the material witness.

3. I hope, the learned trial judge knows what will happen if ultimately the case ends in conviction and an appeal comes before this Court. This is an area where the trial judges will have to maintain a practical approach. Without the aid and advice of the counsel, these petitioners could not have done anything on 19.1.2015. They were really helpless. This sort of negative approach will cause injustice to the parties. Anyway, in the present circumstances, I feel that an opportunity must be granted to the petitioners to recall the witness and to cross

examine her.

In the result, this Crl.M.C is allowed. The impugned order passed by the learned trial judge in C.M.P No.2539/2015 will stand set aside. The learned trial judge is accordingly directed to grant an opportunity to the petitioners to recall PW1 and cross examine her, as part of defence evidence.

**P.UBAID
JUDGE**

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