

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

Crl.MC.No. 6672 of 2015 ()

**CC 95/2013 of JUDICIAL FIRST CLASS MAGISTRATE COURT-II, HOSDRUG
CRIME NO. 728/2012 OF BEKAL POLICE STATION, KASARGOD DISTRICT**
=====

PETITIONER/ACCUSED:

**BEEFATHIMA, AGED 48 YEARS
W/O.MUSTHAFA, ILLYAS NAGAR, BEKAL FORT
KASARAGOD DISTRICT.**

**BY ADVS.SRI.M.RAMESH CHANDER (SR.)
SRI.ANEESH JOSEPH
SMT.DENNIS VARGHESE**

RESPONDENTS/COMPLAINANT/STATE:

- 1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM 682 031.**
- 2. STATION HOUSE OFFICER
BEKAL POLICE STATION, KASARAGOD DISTRICT. 671 318.**

R BY PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28-10-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

ANNEXURE A1. COPY OF THE FINAL REPORT IN CRIME NO. 728/12 OF BEKAL POLICE STATION.

ANNEXURE A2. COPY OF THE FIRT INFORMATION REPORT.

ANNEXURE A3. COPY OF THE MEMO OF EVIDENCE FILED BY THE 2ND RESPONDENT IN CRIME NO. 728/12.

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY //

P.A.TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.6672 of 2015

Dated this the 28th day of October, 2015

O R D E R

The petitioner herein is the defacto complainant in Crime No.728/2012 of the Bakel Police Station of Kasaragod District. On the final report submitted by the police against five accused, the learned Judicial First Class Magistrate-II, Hosdurg has taken cognizance as C.C.No.95/2013. The petitioner herein seeks a direction under Section 482 Cr.P.C. for further investigation in the crime on the ground that the police has omitted to cite important eye witnesses. On a perusal of the complaint made by the petitioner, and also the final report to which the memo of evidence containing a list of witnesses is appended, I find that there is some omission on the part of the police to cite a material witness, who had witnessed the incident. The said witness is none other than the daughter of the defacto complainant. Besides the complainant, the police has cited CW2 to CW5 as eye witnesses. In the complaint made by the petitioner, she has specifically stated that her daughter was intimidated by the

accused in the said incident. Thus, the complaint shows that the complainant's daughter had witnessed the alleged incident of assault. On a perusal of the materials, I find that the complainant's daughter was questioned by the police as part of investigation, and her statement was also recorded. It is submitted that in the said statement, the daughter has narrated the incident, as to how it occurred. But the name of the daughter does not find a place in the list of witnesses submitted by the police along with the final report. However, that by itself cannot be a ground to order further investigation by the court. It is made clear and observed, that if the trial court finds the necessity of summoning the daughter of the complaint as a witness, the trial court can very well act under Section 311 Cr.P.C., and summon the complainant's daughter as a witness, if such a course is felt necessary for a just decision.

With this observation, this Crl.M.C. is disposed of.

sd

// True Copy //

Sd/-
P. UBAID, JUDGE

P.A. to Judge