

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

Crl.MC.No. 5647 of 2014 ()

IN CRL.M.P NO.8383 OF 2012 IN C.C. NO.472 OF 2010

PETITIONER(S)/ACCUSED:

**VITTIL THOMAS
THANNIKOTU HOUSE, KANJOOR P.O., NEDUMBASSERY VILLAGE
ERNAKULAM.**

**BY ADVS.SRI.M.B.SANDEEP
SMT.R.PRIYA
SRI.V.VISAL AJAYAN
SRI.B.SURJITH
SRI.ABHILASH JOSE
SMT.B.DHANYA**

RESPONDENT(S)/COMPLAINANT/STATE:

**1. VINAYKUMAR PANICKER, AGED 38 YEARS
S/O.U.M.PANICKER, 15-SAFINA SADAN, 7-BUNGLOWS
ANDHERI WEST
MUMBAI (POWER OF ATTORNEY HOLDERSUNIL KUMAR SUKUMAR
S/O.SUKUMARAN NAIR, SRUTHY, PUZHAVATHU
CHANGANASSERY), PIN - 686101.**

**2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA - 682 031.**

R2 BY PUBLIC PROSECUTOR SMT. P. MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 10-02-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 5647 of 2014 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE-A1: TRUE COPY OF THE COMPLAINT FILED BY THE 1ST RESPONDENT DATED 17.4.10.

ANNEXURE-A2: TRUE COPY OF THE PROOF AFFIDAVIT FILED BY THE COMPLAINANT DATED 7.2.2012.

ANNEXURE-A3: TRUE COPY OF THE POWER OF ATTORNEY DATED 18.2.2010

ANNEXURE-A4: TRUE COPY OF THE DEPOSITION OF COMPLAINANT DATED 14.8.12.

ANNEXURE-A5: TRUE COPY OF THE PETITION FILED BY THE COUNSEL FOR THE ACCUSED U/S.311 CR.P.C DATED 6.10.12

ANNEXURE-A6: ORDER DATED 24.9.14 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KOTTAYAM.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No. 5647 of 2014

Dated this the 10th day of February, 2015.

O R D E R

The petitioner herein is the accused in C.C No. 472 of 2010 of the Judicial First Class Magistrate Court -I, Kottayam. It is a prosecution brought under Section 138 of the Negotiable Instruments Act. The complainant examined himself and also a witness. Of course these two witnesses were cross examined by the defence at the right stage. After the examination of the accused under 313 Cr.P.C, the accused made an application to recall the complainant for further cross examination. The said application brought as C.M.P 8383 of 2012 was dismissed by the learned Magistrate on the ground that the complainant and his witnesses were examined long back in 2012, the complainant is employed abroad, and that it would be unjust and inappropriate to recall the complainant for further cross examination in such a situation. The said order dated 24.9.2014 is under challenge. Pending this proceeding, the learned counsel for the petitioner submitted in answer to a question put by the court that the accused is ready to deposit the entire expenses for the complainants' journey. The said

offer was recorded in the proceeding by the court. The learned counsel now repeats the same offer, and submits that the accused is ready to bear all expenses for the complainants' journey to India as a witness. In such a situation, it is appropriate that the petitioner be given an opportunity to recall the complainant, and the other witness for further cross examination. Of course, the petitioner will have to deposit the necessary expenses required for the complainants' journey by flight. Accordingly, he is given permission to deposit the required expenses in court, and make application afresh.

In the result this petition is closed, with observation that if the petitioner deposits the necessary expenses including incidental expenses for the complainants' journey to and fro for further cross examination as a witness in the case, the trial court shall allow the petition to recall the complainant for further cross examination.

P.UBAID,
JUDGE