

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

Cri.MC.No. 6941 of 2015

**CMP NO.2054/2015 IN M.C.NO.186/2012 OF THE JUDICIAL
FIRST CLASS MAGISTRATE COURT-I, KOLLAM**

PETITIONERS/PETITIONERS IN CMP/RESPONDENTS IN MC :-

1. ALEXANDER, AGED 32 YEARS, S/O.HENDRI,
THIRUKUDUMPAVILASOM VEEDU,
KANJIRAMVILAYIL, PUNAUR PAPER MILL(P.O.),
PATHANAPURAM TALUK, KOLLAM DISTRICT.
2. AGNAS, AGED 70 YEARS,
THIRUKUDUMPAVILASOM VEEDU,
KANJIRAMVILAYIL, PUNAUR PAPER MILL(P.O.),
PATHANAPURAM TALUK, KOLLAM DISTRICT.
3. CELIN, AGED 47 YEARS,
THIRUKUDUMPAVILASOM VEEDU,
KANJIRAMVILAYIL, PUNAUR PAPER MILL(P.O.),
PATHANAPURAM TALUK, KOLLAM DISTRICT.
4. SIBI, AGED 20 YEARS, S/O.HENDRI,
THIRUKUDUMPAVILASOM VEEDU,
KANJIRAMVILAYIL, PUNAUR PAPER MILL(P.O.),
PATHANAPURAM TALUK, KOLLAM DISTRICT.

BY ADV. SRI.K.V.ANIL KUMAR

RESPONDENT(S)/STATE & COMPLAINANT :-

1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
2. SONIYAMBIKA, AGED 28 YEARS, D/O.MARY,
JAYANTHI COLONY 18, EDAKARA,
VELLIMON WEST (P.O.),
PERINADU VILLAGE, KOLLAM DISTRICT.
3. MELVIN, AGED 3 YEARS,
JAYANTHI COLONY 18, EDAKARA,
VELLIMON WEST (P.O.),
PERINADU VILLAGE, KOLLAM DISTRICT.
(MINOR REPRESENTED BY THE 2ND RESPONDENT MOTHER)

R1 BY SMT.SHEEBA M.T., PUBLIC PROSECUTOR

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

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APPENDIX

PETITIONER(S)' ANNEXURES :-

**ANNEXURE A : A TRUE COPY OF THE OBJECTION IN M.C.NO.186/2012 ON THE
FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I,
KOLLAM.**

**ANNEXURE B : A TRUE COPY OF AFFIDAVIT AND PETITION IN C.M.P.NO.2054/2015
IN M.C.NO.186/2012.**

**ANNEXURE C : A TRUE COPY OF ORDER DATED 24-06-2015 IN C.M.P.NO.2054/2015
IN M.C.NO.186/2012.**

RESPONDENT(S)' ANNEXURES :- NIL

//TRUE COPY//

P.A. TO JUDGE

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P.UBAID, J.

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Crl.M.C.No.6941 of 2015
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Dated this the 28th day of October, 2015

ORDER

The petitioners herein are the respondents in MC No.186 of 2012 of the Judicial First Class Magistrate Court-I, Kollam which was decided ex-parte on 06.03.2015. The petitioners made an application as CMP No.2054 of 2015 to set aside the ex-parte order. The learned Magistrate dismissed the application on 24.06.2015 on the ground that the application is not properly stamped. Ofcourse, the impugned order creates a confusion as to whether the said application is to set aside the ex-parte order, or to recall witnesses under Section 311 Cr.P.C. When the matter stands closed by an ex-parte order, there is no question of recalling witnesses. Once the ex-parte order is set aside, all the witnesses examined on the side of the petitioners will have to be cross-examined by the respondents. Anyway, the petitioners' grievance is that his application was dismissed on technical ground. If that is the grievance, he can very well

make a fresh application. There may arise the question of delay, when such a second application is made. The petitioners will have to make an application to condone the delay also. When the first application is dismissed on the ground that it is not properly stamped, the petitioners can very well make a fresh application for the relief, and it will have to heard and decided on merits. With these observations, this Crl.M.C. is closed.

Sd/-

**P.UBAID
JUDGE**

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//TRUE COPY//

P.A. TO JUDGE