

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

Crl.MC.No. 7016 of 2015

**M.P.NO.2693/2015 IN S.C.NO.57/2012 OF ADDITIONAL DISTRICT & SESSIONS
COURT-VII, ERNAKULAM**

PETITIONER(S)/ACCUSED 2 :

**RIAS, AGED 33 YEARS,
S/O.GAFOOR, H.NO.10/151, KURUBAYIL HOUSE,
10TH LANE KALPETHI BHAGAM, FORT KOCHI, NOW RESIDING
AT RENTED HOUSE ANEY VINCENT, PATTALAM ROAD,
FORT KOCHI P.O., ERNAKULAM DISTRICT.**

BY ADV. SRI.P.P.GENSON

RESPONDENT(S)/COMPLAINANT :

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. THE SUB INSPECTOR OF POLICE,
ALUVA POLICE STATION, KOCHI, ERNAKULAM DISTRICT.**

BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 02-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

**ANNEXURE I: ORDER OF THE ADDITIONAL DISTRICT & SESSIONS COURT
DATED 29.10.2015.**

**ANNEXURE II: COPY OF NOTICE AND CONSENT ALLEGED TO HAVE BEEN
GIVEN BY ACCUSED.**

**ANNEXURE III: TRUE COPY OF THE PETITION FILED BY THE PETITIONER
AT THE COURT BELOW DATED 28.10.2015.**

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

B. KEMAL PASHA, J.

.....
Crl.M.C. No.7016 of 2015
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Dated this the 2nd day of November, 2015

ORDER

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What is under challenge is Annexure-II by which the seizing officer had allegedly got executed from the petitioner and the other accused. Altogether there are three accused in the case. The petitioner is the 2nd accused. It seems that in Malayalam, it has been written that "*Read. The presence of Gazetted Officer is not required*". Such a statement has been written at the bottom of Annexure-II by one of the persons. Beneath that, as serial No.1 Bonny Joy has signed. Then, as serial No.2, the 3rd accused has signed. As serial No.3, the petitioner has affixed his signature. The challenge is that the present petitioner, who is the 2nd accused, has not recorded the aforesaid statement, whereas, his name and signature only were obtained by the seizing officer in Annexure-II.

2. It is evident that the said entry regarding the above statement was made by one of the aforesaid persons, whose names and signatures are noted thereunder. The prosecution cannot have a case that all the three persons had made the said entry. It is for the prosecution to prove as to who had made the said entry in Annexure-II. Therefore, the present attempt of the petitioner to send the matter for expert examination is not required in the matter. It will never improve the case of the petitioner. The burden is on the prosecution to prove that the petitioner had made the said entry.

With the said observations, this CrI.M.C. is closed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/02/11

// True Copy //

PA to Judge