

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937Q

CrI.MC.No. 7410 of 2015 ()

CMP NO. 3062/2015 IN SC NO. 173/2009 OF ADDL. SESSIONS COURT-I, KASARGOD

PETITIONER/INFORMANT :

**P. MANJUNATHA, AGED 43 YEARS
S/O.LATE DAMODARA KOROTH VAYAL HOUSE
KALINGOTH DESOM, PANAYAI AMSOM, VIA. KANHANGAD
KASARGOD DISTRICT.**

**BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRA KRISHNAN
SRI.V.VINAY**

RESPONDENTS/ACCUSED/STATE :

- 1. STATE OF KERALA
REP. BY PULIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM - 682 031
(CRIME NO.471/2007 OF BAKEL POLICE STATION
KASARAGOD DISTRICT)**
- 2. P.RAJESH, AGED 30 YEARS
S/O.RAMAN, PULIKKAL HOUSE, NELLIYADUKKAM
KALINGOTH, PANAYAL VILLAGE
KASARAGOD DISTRICT - 671 121.**
- 3. P.RAMAN, AGED 66 YEARS
S/O.APPA, PULIKKAL HOUSE, NELLIYADUKKAM
KALINGOTH, PANAYAL VILLAGE,
KASARGOD DISTRICT - 671 121.**

R1 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 30-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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...2/-

Crl.MC.No. 7410 of 2015 ()

APPENDIX

PETITIONER(S)' ANNEXURES :

**ANNEXURE I: TRUE COPY OF THE PETITION FILED BY THE PETITIONER THE
ADDL. SESSIONS COURT-I, KASARGOD, IN SC NO.173/2009.**

**ANNEXURE II: CERTIFIED COPY OF THE ORDER IN CRL.MP NO.3062/2015 IN
SC NO.173/2009 PASSED BY THE ADDL. SESSIONS JUDGE-I,
KASARAGOD.**

RESPONDENT(S)' ANNEXURES : NIL

//TRUE COPY//

P.S. TO JUDGE

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[CR]

B. KEMAL PASHA, J.

.....
CRL.M.C. No. 7410 of 2015
.....

Dated this the 30th day of November, 2015

ORDER

PW1, who is the son of the deceased in S.C.No.173/2009 of the Additional Sessions Court-I, Kasaragod, filed Crl.M.P.No.3062/2015 before the court below under Section 91 read with Section 311 Cr.P.C. seeking the production of some documents and the recalling of some witnesses for examination. Through Annexure-II order, the court below has dismissed Annexure-I Crl.M.P.

2. It is true that the court below has permitted the petitioner to engage an Advocate of his choice for assisting the prosecution under the proviso to Section 24(8) Cr.P.C. As to the manner in which such a pleader, who is engaged

on the application of the defacto complainant should act, are contained in Section 301(2) Cr.P.C. If any such private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case. The provision is very clear that apart from submitting a written argument, after the evidence is closed in the case, that too with the permission of the Court, the pleader so instructed, can only act under the directions of the Public Prosecutor. That means, such a pleader or a party, cannot file any application, other than the written arguments in the matter. Matters being so, the Crl.M.P filed before the court below is not maintainable and therefore, the dismissal of the said Crl.M.P. by the court below cannot be found fault with.

3. It is high time to think that some more provisions

are to be added to the Code of Criminal Procedure in such matters, especially when a private party aggrieved can file an appeal against acquittal. In such an appeal, of course, the shortcomings of the prosecution, inefficiency of the prosecution, as well as the request of this kind forwarded by the aggrieved person, are valid grounds. In such case, some more powers have to be given to the pleaders being appointed by the parties in the matter under the proviso to Section 24(8) Cr.P.C. As things stand now, when any other interference or intervention is barred by the provisions contained under Section 301(2) Cr.P.C., the present, Crl.M.C. is devoid of merits, and is only to be dismissed, and I do so.

In the result, this Crl.M.C. is dismissed.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge