

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 16TH DAY OF FEBRUARY 2015/27TH MAGHA, 1936

Cri.MC.No. 6320 of 2014 ()

AGAINST THE ORDER IN CC 217/2010 of J.M.F.C. - II,
PERUMBAVOOR, DATED 04-10-2014

PETITIONER(S)/ACCUSED:

VINEETHA NELSON, AGED 35 YEARS,
W/O.NELSON, PANACHIKKAL VEEDU,
NEAR ST.GEORGE JACOBITE CHURCH, ALLAPRA P.O.,
PERUMBAVOOR.

BY ADVS.SRI.VIPIN NARAYAN
SRI.M.REVIKRISHNAN

RESPONDENT(S)/RESPONDENT/COMPLAINANT AND STATE:

1. GEORGE KIZHAKKUMASSERY, AGED 51 YEARS,
S/O.PAILY, KZHAKKUMASSERY VEEDU, ALLAPRA P.O.,
PERUMBAVOOR - 683 556.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, 682 031.

R1 BY ADV. SRI.JOHN JOSEPH(ROY)
R2 BY PUBLIC PROSECUTOR SMT. P. MAYA.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16-02-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A: TRUE COPY OF C.M.P NO.83 OF 2014 IN C.C NO.210/2010 PENDING ON THE FILES OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, PERUMBAVOOR.

ANNEXURE B: TRUE COPY OF THE C.M.P NO.163/2014 IN C.C.NO.210/2010 PENDING ON THE FILES OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, PERUMBAVOOR.

ANNEXURE C: TRUE COPY OF THE ORDER DATED 4/10/2014 IN C.C NO.210/2010 PENDING ON THE FILES OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, PERUMBAVOOR.

RESPONDENT(S)' EXHIBITS : NIL

// True Copy//

P.A. to Judge

K. RAMAKRISHNAN, J.

Crl.M.C. No.6320 of 2014

Dated this the 16th day of February, 2015

ORDER

Accused in C.C.217/2010 on the file of the Judicial First Class Magistrate Court-II, Perumbavoor, has filed this petition challenging the order dated 04.10.2014, dismissing the application Crl.M.P.No.81/2014, which was allowed earlier under Section 482 of the Code of Criminal Procedure.

2. It is alleged in the petition that the petitioner is the accused in C.C.217/2010 pending before the Judicial First Class Magistrate Court-II, Perumbavoor, which was taken on file on the basis of a private complaint filed by the first respondent, alleging offence under Section 138 of the Negotiable Instruments Act. Though the petitioner admitted her signature in the cheque, she has denied the handwriting in the cheque. As the case of the complainant was that, it was in the handwriting of the petitioner, she filed

Crl.M.P.No.81/2014 for sending Ext.P1 cheque for expert opinion in respect of the writings of the cheque and the same was allowed as per the order dated 12.06.2014 with a direction that she will have to produce her admitted handwriting during the year 2009 for sending the same to the expert.

3. The petitioner filed an application to summon certain documents in the school as Annexure-B and according to the petitioner, the same was also allowed and those documents were produced, but the court below was not satisfied with these documents and wanted admitted documents in the handwriting of the accused to be produced and thereby the impugned Annexure-C order dismissing the application granting permission to send the cheque for expert opinion as per order in Crl.M.P.81/2014 dated 12.06.2014 was passed which is being challenged by filing this petition.

4. Heard the counsel for the petitioner, first

respondent and the Public Prosecutor

5. The counsel for the petitioner submitted that the documents that has been summoned from the school was in the handwriting of the petitioner which was written by her while she was working as teacher of that school and the entire writings in the applications were in her handwriting, except those documents she is not having any document in her possession and the court below wanted documents which are not in her possession to be produced. She is even prepared to summon the cheques if any given, account opening form in her handwriting submitted to the bank during the relevant period for this purpose. He also submitted that, court cannot insist documents which are not in the possession of the accused for the purpose of comparison and that will prejudicially affect her right to proceed with the case.

6. On the other hand, the counsel for the first respondent submitted that it is only a delaying tactics that

the application has been filed. Further he had produced an agreement executed between the complainant, the present petitioner and her husband agreeing to settle the cases between them including this case and that agreement was produced in another case against her husband and her husband was convicted in that case. So there is no need to send this cheque for expert opinion when there is admission in the agreement.

7. Heard the Public Prosecutor as well.

8. It is an admitted fact that, the petitioner is the accused in C.C.217/2010 pending before the Judicial First Class Magistrate Court-II, Perumbavoor, which was taken on file on the basis of a private complaint filed by the first respondent alleging offence under Section 138 of the Negotiable Instruments Act. The case of the complainant in the complaint was that the petitioner had issued the cheque in discharge of a legally enforceable debt for the amount allegedly due from her to the complainant. Though the

petitioner had admitted her signature in the cheque, she had denied having written the cheque and her case was that blank signed cheque given for some other purpose was mis-used and the present complaint was filed. It is also an admitted fact that after the complainant's evidence, the petitioner filed Crl.M.P.No.81/2014 for sending Ext.P1 cheque for expert opinion to compare the handwriting in the cheque and give an opinion as to whether it was in the handwriting of the petitioner and that petition was allowed by order dated 12th June 2014 and it is seen in the order that there was a direction to the petitioner to produce documents containing her admitted handwriting in the year 2009, for sending the same along with the cheque to the expert Sri. Sudeep P.N., Indian Criminology and Forensic Science Association, who is the expert selected by the magistrate for that purpose. The petitioner filed Crl.M.P.No.163/2014 for summoning certain documents, namely single window admission register 2009-10, during

June, 2009 alleging that the handwriting in the register during the period was that of the petitioner and it appears that, that application was allowed and the court is not satisfied with the documents and it is thereafter that the earlier order in Crl.M.P.81/2014 was recalled and the petition was dismissed by the impugned order. This order is being challenged.

9. It is true that mere sending the standard handwriting taken from the court alone will not be sometimes sufficient as there is a possibility of changing the handwriting. But the expert can find out whether there is any wilful manipulation of the handwriting also if such a standard handwriting has been sent for expert opinion. Further if the petitioner is not having any other document with her during the relevant period, there is no purpose in insisting the petitioner to produce those documents for the purpose of sending it for expert opinion and due to non-production of the same, dismissing the application earlier

allowed for that purpose is unsustainable in law. However the court can send the available documents in which the petitioner had admitted her handwriting of the relevant period kept in a school and at that time one cannot expect her to change her handwriting. Further the counsel for the petitioner also submitted that, he will take steps to get the cheques if any issued to the bank for encashment, which was written in the handwriting of the petitioner and also the application filed by her for opening the account in the bank, so that these document can also be sent along with Ext.P1 cheque containing disputed handwriting for expert opinion for comparison. It was submitted by the counsel for the first respondent that, in the agreement said to have been executed between the complainant, the petitioner and her husband, there is admitted signature and it was a type written agreement. In this case, there is no case for the accused that the signature in the cheque was not hers. She is only challenging the handwriting in the cheque. The

question as to whether the agreement can be relied on by the court for the purpose of proving the contents as on admission is a matter to be considered by that court while appreciating the evidence and that will not help the court to come to a conclusion regarding the present dispute. So under the circumstances, this court feels that the order passed by the court below by Annexure-C order dated 04.10.2014, dismissing the application Crl.M.P.No.81/2014 which was allowed earlier as per order dated 12.06.2014 has to be set aside and the matter has to be remitted to the court below to send the admitted documents, which has been summoned by the petitioner from the school and permitting the petitioner to apply for summoning the account opening form or cheques if any issued by the petitioner in her handwriting during the relevant period from that bank and if such an application is filed, then court below shall allow that application and give an opportunity for the petitioner for getting those documents and

thereafter, if those documents are available, send them also with document already summoned with standard handwriting of the petitioner obtained from court and if any information has been received from the bank regarding those aspects, regarding the non-availability, then court is directed to take the standard handwriting of the accused from court and send the same along with the handwriting said to have been found in the documents summoned from the school as per order in Crl.M.A.No.163/2014 and send those documents to the expert and get an opinion within a time frame fixed by that court and then dispose of the case in accordance with law without delay.

The petitioner is directed to file the application before that court for summoning the documents from the bank if any available on the date on which the case is now posted as directed by this court for the parties to appear before that court itself and the court below is directed to pass appropriate orders in the application and the

petitioner is directed to take steps within the time fixed by the court below so as to avoid delay in taking the steps and disposing the case.

With the above direction and observation the petition is disposed of. Parties are directed to appear before the court below on 27.02.2015. Office is directed to communicate this order by fax immediately to the court below to avoid delay in communicating the order.

Sd/-

K. RAMAKRISHNAN, JUDGE

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P.A. to Judge

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