

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 29TH DAY OF DECEMBER 2015/8TH POUSHA, 1937

Cr1.MC.No. 8094 of 2015

AGAINST THE ORDER DATED 21.12.2015 IN CRL.M.P
NO.4912/2015 OF THE COURT OF THE 1ST ADDITIONAL SESSIONS
JUDGE IN S.C NO.300/2015
CRIME NO. 173/2015 OF PERAMANGALAM POLICE STATION,
TRISSUR

PETITIONER/ACCUSED:

MOHAMMED NISHAM A.A, AGED 39 YEARS
S/O.ABDUL KHADER,
ADAKKAPRAMBIL HOUSE, PADIYAM,
MUTTICHOOR, THRISSUR.

BY ADVS.SRI.M.K.DAMODARAN (SR.)
SRI.ALAN PAPALI
SRI.SOJAN MICHEAL
SRI.GEORGE BRISTON
SRI.J.VIMAL
KUM.P.K.RESHMA (KALARICKAL)
SRI.ANTONY ROBERT DIAS

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

BY SRI.ASIF ALI -DIRECTOR GENERAL OF PROSECUTION

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 29-12-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

Cr1.MC.No. 8094 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE-A: COPY OF THE PETITION CRL.M.P.NO.4912/2015
FILED ON BEHALF OF THE PETITIONER BEFORE THE COURT OF 1ST
ADDITIONAL SESSIONS JUDGE, THRISSUR DATED 15.12.2015.

ANNEXURE-B: COPY OF THE OBJECTION FILED BY THE
INVESTIGATING OFFICER BEFORE THE 1ST ADDITIONAL SESSIONS
COURT, THRISSUR (IN CRIME NO.173/2015 OF PERAMANGALAM
POLICE STATION).

ANNEXURE-C: COPY OF THE ORDER DATED 21.12.2015 IN
CRL.M.P.NO.4912/2015 IN S.C.NO.300/2015 OF 1ST ADDITIONAL
SESSIONS JUDGE, THRISSUR.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

ab

P.UBAID, J.

Crl.M.C No. 8094 of 2015

Dated this the 29th day of December, 2015

O R D E R

The petitioner herein has been facing a prosecution under Section 302 of the Indian Penal Code. The prosecution evidence is over before the learned trial judge. After the examination of the accused under Section 313 of the Code of Criminal Procedure, the accused was called upon to enter on his defence. Accordingly, he filed a long list of witnesses, which the learned trial judge cut short. The petitioner also made an application under Section 311 of the Code of Criminal Procedure to recall a prime witness examined by the prosecution as PW1. The trial judge disallowed the request by order dated 21.12.2015 in Crl.M.P No.4912/2015. The said order is under challenge, and it is sought to be set aside under Section 482 of the Code of Criminal Procedure.

2. On hearing both sides, and on a perusal of the impugned order, I find that presently there is no absolute necessity of recalling the witness again. Paragraph 6 of the impugned order shows that after the examination of PW1 which lasted for days, the learned defence counsel made a further request to put some more questions, which the learned trial judge allowed, and the deposition

was again read over to the witness. The impugned order shows that the prime witness was extensively and thoroughly cross examined for hours and days by the defence. The defence now wants to recall him on the ground that some vital points were omitted to be asked. It is not known from the records, what these vital points are. Of course it is true that the discretion of the Court under Section 311 of Cr.P.C must be exercised judiciously, and the object of such discretion must be to do justice, to ensure justice and to prevent miscarriage of justice. Here, I find that the defence has cross examined the prime witness on all the points, and in all ways possible. I do not think that denial of permission to recall the witness further will cause any miscarriage of justice, or will deny justice to the accused. What I understand, perceive and find is that the attempt of the defence has been to protract the trial till May 2016. I find no reason for interference in the order passed by the learned trial judge.

Hence this Crl.M.C is dismissed in limine without being admitted to files.

**Sd/-
P.UBAID
JUDGE**

//True Copy//

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P.A to Judge