

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

CrI.MC.No. 7317 of 2014 ()

CRL.M.P. 5173/2014 IN CC.NO. 1023/2013
OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, PERINTHALMANNA
CRIME NO. 1224/2011 OF PERINTHALMANNA POLICE STATION, MALAPPURAM

PETITIONER/PETITIONER/1ST ACCUSED :

ABDUL GAFOOR FAISI
S/O. UNNEENKUTTY, PULIKKAD HOUSE, AALIPPARAMBU VILLAGE
VATTAPPARAMBU, PERINTHALMANNA, MALAPPURAM DISTRICT.

BY ADVS.SRI.P.SAMSUDIN
SRI.K.C.ANTONY MATHEW
SRI.JITHIN LUKOSE

RESPONDENTS/STATE AND DE-FACTO COMPLAINANT :

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- 1. STATE OF KERALA**
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.
 - 2. FATHIMA SAFNA , AGED 23 YEARS**
D/O. HAMZA, PATTATHODI HOUSE, ARAKKUPARAMBU AMSOM
PUTHUR DESOM, THEYYOTU CHIRA, PERINTHALMANNA
MALAPPURAM DISTRICT, PIN-676 503.

R1 BY PUBLIC PROSECUTOR SRI. JIBU P. THOMAS

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 07-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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...2/-

Crl.MC.No. 7317 of 2014 ()

APPENDIX

PETITIONER(S)' ANNEXURES :

**ANNEXURE A1 : COPY OF THE FIR AND FINAL REPORT IN CRIME NO.1224/2011
OF THE PERINTHALMANNA POLICE STATION.**

**ANNEXURE A2 : COPY OF THE AFFIDAVIT DTD.27.9.2014 FILED BY THE
PETITIONER.**

**ANNEXURE A3 : CERTIFIED COPY OF ORDER DTD.12.11.2014 IN CRL.MP
NO.5173/2014 IN CC NO.1023/2013 ON THE FILES OF JFCM
COURT-II, PERINTHALMANNA.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

B.KEMAL PASHA, J.

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CRL.M.C. No.7317 of 2014
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Dated this the 7th day of January, 2015

ORDER

Petitioner, who is the first accused in C.C.1023/2013 of of the Judicial First Class Magistrate's Court-II, Perintalmanna, has come up under Section 482 Cr.P.C. for getting Annexure-A3 order dated 12.11.2014 passed by the court below in Crl.M.P.5173/2014, quashed.

2. The offences alleged against the petitioner and the other accused are under Sections 498A and 406 read with Section 34 of the Indian Penal Code. Evidently, it is a warrant trial.

3. When the matter came up for examination of the petitioner under 313 Cr.P.C., the learned counsel for the petitioner has filed a petition stating that he may be

permitted to answer the questions to be answered by the petitioner. It seems that the court below has dismissed the said petition by observing that the affidavit of A1 was not seen filed.

4. Heard both sides. The learned counsel for the petitioner has produced Annexure A2 copy of the affidavit which was filed by the petitioner before the court below on 27.09.2012 in which it has been vaguely stated that he had authorised his counsel 'to take necessary steps at the time when he was to be examined under 313 Cr.P.C'. Even if such an affidavit was filed, it cannot be stated that it is a proper affidavit. Apart from that, Section 313(1)(b) Cr.P.C. is applicable only in summons cases. In contingencies, in warrant trial also it may be possible for a party to engage his counsel to answer the questions that would be put to him under Section 313 Cr.P.C. In the absence of such a specific and proper affidavit to that effect, I do not find any illegality, irregularity or impropriety in the impugned order passed by

the court below. Therefore, this Crl.M.C. is devoid of merits, and it 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