

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

Crl.MC.No. 7401 of 2014 ()

AGAINST THE ORDER IN CRL.M.P.4116/2014 IN SC 217/2013 of ADDL. SESSIONS
COURT - II, PATHANAMTHITTA
CRIME NO. 90/2007 OF THANNITHODU POLICE STATION , PATHANAMTHITTA

PETITIONER/ACCUSED:

PANICKER, AGED 59 YEARS,
S/O.ADICHAN, MURUPPEL VEEDU,
THANNITHODE MURI AND VILLAGE, KONNI TALUK,
PATHANAMTHITTA DISTRICT.

BY ADV.SRI.V.SETHUNATH

RESPONDENTS/RESPONDENTS :

1. SUB INSPECTOR,
THANNITHODE POLICE STATION-689 652.

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

BY PUBLIC PROSECUTOR SMT. P.MAYA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 12-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CrI.MC.No. 7401 of 2014 ()

APPENDIX

PETITIONER'S EXHIBITS :

ANNEXURE-I. COPY OF THE CRL. MP NO.4116/14 IN SC 217/2013 PENDING BEFORE THE ADDL.SESIONS COURT,ADHOC, FAST TRACK NO.II, PATHANAMTHITTA.

ANNEXURE-II. COPY OF THE ORDER IN CRL. MP NO.4116/14 IN SC 217/2013 PENDING BEFORE THE ADDL.SESIONS COURT , ADHOC, FAST TRACK NO.II, PATHANAMTHITTA.

ANNEXURE-III. COPY OF THE FIR AND MAHAZAR IN CRIME NO. 90/2007 OF THANNITHODE POLICE STATION.

RESPONDENTS' EXHIBITS :

NIL

// True Copy //

P.A. To Judge

DSV/13/1/15

P. UBAID, J.

Crl.M.C.No.7401 of 2014

Dated this the 12th day of January, 2015

O R D E R

The petitioner herein is the sole accused in S.C.No.217/2013 before the learned II Additional Sessions Judge, Pathanamthitta. It is a prosecution alleging the offence punishable under Section 8(2) of the Kerala Abkari Act. When called upon to enter upon his defence under Section 233 Cr.P.C., the petitioner made application to call for the survey plan relating to a particular survey number, with the object of proving the distance between his residential compound and the alleged place of incident. The learned Additional Sessions Judge dismissed the said application, CMP No.4116/2014 on 17.12.2014, on the ground that the document required by the petitioner is not relevant to prove any of the contentions put forward by the accused. The said order is under challenge, and is sought to be set aside under Section 482 Cr.P.C.

2. Sub Section (3) to Section 233 Cr.P.C. provides that if the accused applies for the issue of any process for compelling

the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. In this case, I find that the intention of the petitioner is not at all to cause delay in proceeding, or to defeat the ends of justice, and it is not a tactics for vexation also. Of course a scene plan showing the details like the place of residence of the petitioner, other structures etc. cannot be now ordered, because it is something to be prepared as part of investigation. However, a mere survey plan which is a public document, sought to be produced by the petitioner as part of defence evidence, can well be summoned by the court under Section 233(3) Cr.P.C. The learned counsel submits that such a survey plan, which is a public document, will in fact show the distance between his residential compound in a particular survey sub division, and the alleged place of incident which lies far away in another sub division. If that is the purpose of examination of the witness and production of the survey plan, that can well be

allowed by the court under Section 233(3) Cr.P.C. The accused has his precious rights in defence under Section 233 Cr.P.C., and if he wants a document which can prove his case, it will definitely have to be summoned by the court. Of course, this court makes it clear that what is possible to be summoned is only the survey plan available in the Village Office, and nothing more. This means that the Village Officer cannot be directed to mark other things in the survey plan. He can produce only the plan as it is available now in the Village Office.

In the result, this Crl.M.C. is allowed. The impugned order is hereby set aside, and the court below is directed to permit the petitioner herein to summon the required document and the Village Officer, as indicated above.

Sd/-

P. UBAID, JUDGE

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