

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

Cr1.MC.No. 7451 of 2014

AGAINST THE ORDER IN CRL.R.P NO.75/2011 of SESSIONS COURT,
PALAKKAD

PETITIONER/ACCUSED 1:

SHAJAHAN, AGED 33 YEARS,
S/O.UDUMAN, METTUVALAVU, THATHAMANGALAM P.O.
THATHAMANGALAM VILLAGE, CHITTUR TALUK
PALAKKAD DISTRICT.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENTS/STATE AND COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, HIGH COURT ROAD,
ERNAKULAM.
2. CHANDRAN, AGED 58 YEARS,
S/O.CHAMI, THUPPALAKALAM,
THATHAMANGALAM VILLAGE,
CHITTUR TALUK, PALAKKAD-678101.

R2 BY ADV. SRI.BINOY VASUDEVAN
R2 BY ADV. SRI.R.MANIKANTAN
R1 BY PUBLIC PROSECUTOR SMT.P.MAYA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 13-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 7451 of 2014

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE 1 : COPY OF THE CALENDER CASE NUMBER 13/06 OF THE COURT
OF JFCM, CHITTUR.

ANNEXURE 2 : COPY OF THE ORDER DT.OCT.7, 2011 IN CMP 6339/2011 IN
CALENDER CASE NUMBER 13/06 OF THE COURT OF THE JFCM CHITTUR.

ANNEXURE 3 : COPY OF THE ORDER DT.JULY 23, 2014 IN CRL.R.P NO.
75/2011 OF THE COURT OF SESSION, PALAKKAD DIVISION.

RESPONDENTS' ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.7451 of 2014

Dated this the 13th day of February, 2015

O R D E R

The petitioner herein is the accused No.1 in C.C No.13/2006 of the Judicial First Class Magistrate Court, Chittur. After examination of the accused under Section 313 of the Code of Criminal Procedure he made an application under Section 311 of the Code of Criminal Procedure to recall the complainant for cross examination. It is submitted that the learned counsel for the accused could not cross examine the complainant at the right stage. Finding explanation for the said failure, the learned Magistrate allowed the application on a cost of ₹300/-. When the petitioner failed to make payment of cost, the said application was dismissed. He again made another application to recall the complainant. It was allowed by the learned Magistrate on a cost ₹1,000/-. This time also the accused failed to make payment of cost. Thus the second application was also ultimately dismissed. The aggrieved accused approached the Court of Session, Palakkad with Crl.R.P No.75/2011. The learned Sessions Judge concurred with the view taken by the learned Magistrate.

Accordingly, the revision was also dismissed. Now the accused is before this Court under Section 482 of the Code of Criminal Procedure with request for an opportunity to cross examine the complainant. Of course it is true that it is the right of the accused to cross examine any witnesses examined by the complainant, including himself. But here sufficient opportunity was availed by the accused, and on two occasions he failed to make payment of the cost ordered by the court. No doubt, the Court below cannot be found fault with him. Decision was rightly taken by the two authorities below. Still in the interest of justice, I find the necessity of granting a final opportunity to the accused to recall the complainant for cross examination. If the case ultimately stands disposed of on the basis of the unchallenged evidence of the complainant, we can think of what will happen at the next stage. Such unpleasant situation can be avoided. However, the complainant is entitled to receive something reasonable for the inconvenience suffered by him. I feel that on a cost of ₹2,000/- as a final chance the petitioner can be allowed to recall the complainant.

In the result, this Criminal Miscellaneous Case allowed. The learned Magistrate is hereby directed to allow the

petitioner to recall the complainant for cross examination on condition that an amount ₹2,000/- shall be deposited by the petitioner in the court below as cost, for payment to the complainant, within three weeks from this date. If possible, the main case itself shall be disposed of by the learned Magistrate within three months.

**P.UBAID
JUDGE**

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