

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

OP(Crl.).No. 2 of 2015 (Q)

CC 1161/2007 OF JUDICIAL FIRST CLASS MAGISTRATE COURT - I, KOLLAM

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PETITIONER(S):

1. SANTOSH, AGED 34 YEARS,
S/O KUMARAN, PUTENVILATHEKKATHIL VEETIL,
MARANADU MURI, PAVITHRESWARAM VILLAGE, KOLLAM.
2. RADHAMANI, AGED 48 YEARS,
D/O DEVAKI, PUTHENVILATHEKATHIL, MARANADU MURI,
PAVITHRESWARAM VILLAGE, KOLLAM.

**BY ADVS.SRI.P.HARIDAS
SRI.P.C.SHIJIN**

RESPONDENT(S):

1. STATE OF KERALA,
RERPESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.
2. ASST. PUBLIC PROSECUTOR,
GRADE - I, KOLLAM - 691 001.
3. SHEEBA, AGED 29,
D/O. SHANMUGADAS, KANNAMTHUVADAKKATHIL HOUSE,
CHEROOR CHERI, KOTTANKARA VILLAGE.

R1 & R2 BY GOVERNMENT PLEADER SRI.SREEJITH V.S.

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
19-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

OP(Crl.).No. 2 of 2015 (Q)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE FIR NO 120/7 OF THE KILIKOLLUR POLICE
DATED 21-03-2007.**

**EXHIBIT P2: TRUE COPY OF THE FINAL REPORT FILED IN EXHIBIT P1
DATED 06-08-2007.**

**EXHIBIT P3: TRUE COPY OF THE COMPLAINT FILED BY THE 3RD RESPONDENT
U/S 190 CRPC BEFORE THE LEARNED MAGISTRATE, KOLLAM
DATED 15-03-2007.**

**EXHIBIT P4: TRUE COPY OF THE DEPOSITION OF THE 3RD RESPONDENT
PW1 DATED 03-08-2011.**

**EXHIBIT P5: TRUE COPY OF THE RECEIPT OF RS 1,00,000/- BY THE
3RD RESPONDENT.**

**EXHIBIT P6: TRUE COPY OF THE JOINT PETITION FOR DIVORCE FILED BY THE
PARTIES.**

**EXHIBIT P7: TRUE COPY OF THE APPLICATION FILED BY THE LEARNED APPENDIX
GR I KOLLAM DATED 21-08-2014.**

**EXHIBIT P8: TRUE COPY OF THE OBJECTION FILED BY THE DEFENSE
DATED 11-09-2014.**

**EXHIBIT P9: TRUE COPY OF THE ORDER OF LEARNED MAGISTRATE PASSES IN
CC NO 1161/2007 DATED 25-11-2014.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

B. KEMAL PASHA, J.

O.P.(Crl) No. 2 OF 2015

Dated this the 19th day of January, 2015

J U D G M E N T

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The accused in C.C.No.1161/2007 of the Judicial First Class Magistrate's Court-I, Kollam has come up by challenging order dated 25.11.2014 passed by the said court, by which an application filed by the learned Assistant Public Prosecutor under Section 311 Cr.P.C has been allowed. It seems that the learned Assistant Public Prosecutor had conducted the chief examination of PW1 on 3.8.2011 and on that date, on account of the request of the learned defence counsel, the cross examination was adjourned to another date. On the date on which PW1 was subjected to cross examination, the learned Assistant Public Prosecutor was not present. When the learned Assistant Public Prosecutor came to know that in cross examination, PW1 has deposed matters contradictory to her versions in chief examination, the present application was filed under Section 311 Cr.P.C. just for enabling him to subject PW1 to re-examination. The court below has allowed the request through the impugned order.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

The only apprehension forwarded by the learned counsel for the petitioner is that under the guise of re-examination, the present attempt may be to conduct further chief examination of the witness, which is not permissible under Section 311 Cr.P.C. The apprehension seems to be reasonable. PW1 can be recalled for subjecting her to re-examination. Of course, if the learned Assistant Public Prosecutor as well as the court below feel that her versions in cross examination are contradictory to the matters came out in chief examination, the learned Assistant Public Prosecutor can be permitted to put questions that could be put in cross examination to her by invoking the provisions under Section 154 of the Indian Evidence Act. At the same time, that should not be in the form of a further chief examination and it should be in the form of re-examination in the matter.

With the said observations, this O.P.(Crl) is disposed of.

**sd/-**  
**B.KEMAL PASHA, JUDGE.**

ps/19/1/2015  
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//True copy//

PA to Judge