

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

OP(Cr1.).No. 42 of 2015 (Q)

IN C.C 716/2002 OF THE CHIEF JUDICIAL MAGISTRATE COURT,
KOZHIKODE

PETITIONER:

P.M.PRAMOD, AGED 44 YEARS,
S/O.LATE P.M.N KURUP,
PUTHIYAMADATHIL HOUSE,
IRINGAL AMSOM, IRINGAL DESOM,
KOYILANDY TALUK,
KOZHIKODE DISTRICT.

BY ADV. SRI.G.SANTHOSH KUMAR (P).

RESPONDENTS:

1. N.V.PARAMESWARAN, AGED 45 YEARS,
S/O.LATE RAJAN, "DARSHANA",
KOTTOOLI AMSOM, KOTTOOLI DESOM,
KOZHIKODE TALUK - 673 001.
2. STATE OF KEARLA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA - 31.

R2 BY GOVERNMENT PLEADER SMT.S.HYMA

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
13-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(Cr1.).No. 42 of 2015 (Q)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1: COPY OF THE LEGAL NOTICE ON 3.7.2002

EXHIBIT P2: COPY OF THE LEGAL NOTICE DATED 12.7.2002

EXHIBIT P3: COPY OF THE REPLY ON 25.7.2002

EXHIBIT P4: COPY OF THE REPLY NOTICE DATED 1.8.2002

EXHIBIT P5: COPY OF THE APPLICATION DATED 28.10.2014

EXHIBIT P6: COPY OF THE COUNTER AFFIDAVIT FILED IN C.M.P
NO.2264/2014

EXHIBIT P7: COPY OF THE ORDER IN CRL.M.P NO.2264/2014 PASSED BY
THE CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.A TO JUDGE

ab

P.UBAID, J.

O.P(Crl) No.42 of 2015

Dated this the 13th day of March, 2015

J U D G M E N T

The petitioner herein is the accused in C.C No.176/2002 of the Chief Judicial Magistrate Court, Kozhikode. Though cognizance was taken in 2002, the accused made appearance in the case only in July, 2004. After a long drawn procedure (due to delay in process at the hands of the accused himself) the complainant's evidence was recorded by the trial court, and evidence was closed in March 2007. After the examination of the accused under Section 313 of the Code of Criminal Procedure, the case proceeded for defence evidence. By that time, the accused made an application to send the disputed document for comparison by a handwriting expert. When the request was declined by the trial court, the accused approached this Court. As per order dated 24.10.2008 in Crl.M.C No.2585/2007 this Court allowed the request of the accused and directed comparison of the document in dispute. Accordingly, the said document was called for by the learned Magistrate from the Sub Court, where a civil suit was pending between the parties, and the document was sent for comparison.

The report submitted by the expert is now in court. The defence evidence was also closed on 20.10.2014. Thereafter the complainant made an application to reopen the evidence with the object of marking and proving the report of comparison submitted by the handwriting expert. The learned Magistrate allowed the said C.M.P No.2264/2014 on 21.11.2014. The said order is under challenge in this proceeding, and it is sought to be set aside.

2. On hearing the learned counsel, and on a perusal of the copy of this court's order in Crl.M.C No.2585/2007, I find it not necessary to issue notice to the complainant in this proceeding. Even without such notice this Criminal Miscellaneous Case liable to be dismissed on admission. There is report from the learned Chief Judicial Magistrate, Kozhikode stating the history of the case. This shows that trial was in fact delayed at the hands of the accused himself. Pending the proceeding he made an application for comparison of the disputed documents. When the trial court declined his request, he approached this Court, and comparison of the document was ordered by this Court. What the complainant now prays is the very same relief. It is not known why the accused now objects in marking the documents received in court at his instance. He

requested for comparison with the hope that he will get favourable finding. When the report came, and he found that it is against him, he did not proceed further. But the report is in Court, which the trial court will have to mark as a court document. Report of comparison cannot be claimed to be his by the complainant or the accused. Now the complainant wants to mark the document on his side for proving the case. I find that in the nature of the dispute, the said report will help the trial court in taking a just decision. The said report came in court at the instance of the accused. He cannot now disown it. When the complainant wants to mark it and prove it, the accused cannot object it. It is not known why the accused objects the request of the complainant to adduce independent evidence regarding comparison of the disputed signature. I find no merit in this proceeding brought by the accused against the order, allowing the request of the complainant.

In the result, this Criminal Miscellaneous Case is dismissed in limine without being admitted to files.

ab

**P.UBAID
JUDGE**