

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

OP(Crl.).No. 90 of 2015 (Q)

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CMP.7375/2014 IN C.C.294/2006 OF  
JUDICIAL FIRST CLASS MAGISTRATE'S COURT-1, KANNUR

PETITIONERS/ACCUSED:

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1. M.V.RAGHUNATHAN  
AGED 55 YEARS, S/O.RAGHAVAN NAMBIAR  
UMMU NILAYAM, NR.MISSION HOSPITAL  
CHERKUNNU.
2. K.SATHYANATHAN  
S/O.KUNHIKRISHNAN, AGED 64 YEARS  
GOVERNMENT WELFARE COLONY  
KALLEKULANGARA, PALAKKAD.

BY ADV. SRI.P.U.SHAILAJAN

RESPONDENT:COMPLAINANT:

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STATE OF KERALA  
REPRESENTED BY STATION HOUSE OFFICER  
KANNUR TOWN POLICE STATION  
THROUGH THE PUBLIC PROSECUTOR  
HIGH COURT OF KERALA  
ERNAKULAM - 682 031

BY GOVERNMENT PLEADER, SMT. SAREENA GEORGE P.

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON  
18-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.(Crl.)No. 90 of 2015  
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APPENDIX

PETITIONERS' EXHIBITS  
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EXT.P1 : TRUE COPY OF PETITION IN CMP.7375/2014 ON THE FILES OF  
JUDICIAL FIRST CLASS MAGISTRATE'S COURT-1, KANNUR

EXT.P2 : TRUE COPY OF THE ORDER DT.1.1.2015 IN CMP.7375/2014  
O JUDICIAL FIRST CLASS MAGISTRATE'S COURT-1, KANNUR.

RESPONDENTS' EXHIBITS : NIL  
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*// TRUE COPY //*

*PA to Judge*

*dl*

**P.UBAID, J.**

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**O.P (Crl.) No. 90 of 2015**  
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Dated this the 18<sup>th</sup> day of March, 2015.

**J U D G M E N T**

The petitioner herein is one of the accused in C.C No.294 of 2006 of the Judicial First Class Magistrate Court – I, Kannur. The prosecution evidence in the said case stands closed. After the examination of the accused under Section 313 Cr.P.C, the petitioner made an application under Section 243 Cr.P.C to examine some of the witnesses, already examined by the prosecution. During trial the learned counsel for the accused could not cross examine PW6, PW8, PW17 and PW19. The accused now wants to cross examine these witnesses. Instead of making a prayer for cross examination of the prosecution witnesses under Section 243 (2) Cr.P.C, the accused made request to examine them as defence witnesses. Finding that prosecution witnesses cannot be examined as defence witnesses, the learned Magistrate disallowed the request. The said order dated 1.1.2015 in C.M.P No.7375 of 2014 is under challenge.

2. On a perusal of the impugned order and also the copy of the application filed by the accused under Section 243 Cr.P.C, I find that the real purpose of examination is not to bring them as defence witnesses, but only to cross examine those witnesses under Section 243(2) Cr.P.C. The right of the accused to cross examine any witness examined by the prosecution cannot be denied on technical grounds. Just because, the petitioner inadvertently happened to make a prayer to examine them as defence witnesses the request cannot be disallowed. We know what will happen ultimately, if the unchallenged evidence of the witnesses is accepted by the court, and an appeal comes before the appellate court. So it is only appropriate that the accused be allowed to cross examine the prosecution witnesses under 243(2) Cr.P.C.

In the result, this original petition is allowed. The impugned order passed by the court below is set aside, and the court below is hereby directed to permit the petitioner to recall the witnesses PW6, PW8, PW17 and PW19 for cross examination under Section 243 (2) Cr.P.C.

Sd/-

P.UBAID,  
JUDGE