

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

OP(Crl.).No. 149 of 2015 (Q)

**AGAINST THE ORDER/JUDGMENT IN CMP 6942/2014 of J.M.F.C., VARKALA
DATED 23-07-2014**

PETITIONER(S)/PETITIONER/2ND ACCUSED:

**VIJAYAYALATHA AGED 62 YEARS
W/O.ARAVINDAKSHAN, CHURAKKAVILAKOM VEEDU, AYIROOR P.O.
VARKALA, THIRUVANANTHAPURAM DISTRICT.**

BY ADV. SRI.R.ANILKUMAR

RESPONDENT(S)/RESPONDENTS:

- 1. THE STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA.**
- 2. THE SUB INSPECTOR OF POLICE
KADAKKAVOOR POLICE STATION, KADKKAVOOR P.O.
THIRUVANANTHAPURAM DISTRICT, PIN 695306.**
- 3. BINDU MOL
D/O.LALITHA, SBI, SADANAM
NEAR PARABRAHMA DEVI TEMPLE, PADANILAM
PUNNAKKAL CHERI, MAYYANAD P.O., KOLLAM DISTRICT
PIN 691303.**

R1 & R2 BY GOVERNMENT PLEADER SMT.S.HYMA

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 22-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

O.P(CRL) NO.149/2015.

APPENDIX

PETITIONER(S)' EXHIBITS

P1. COPY OF THE CMP NO.6942/2014 IN C.C.No. 832/2010 FILED ON 23.7.2014.

P2. COPY OF THE ORDER PASSED BY J.F.M.C. VARKALA, ON 23.7.2014.

RESPONDENT(S)' EXHIBITS:

NIL.

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///True copy///

P.S. to Judge

OP(Crl.).No. 149 of 2015 (Q)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT-P1: THE TRUE PHOTOCOPY OF THE CMP NO.6942/2014 IN CC NO.832/2010
FILED ON 23.07.2014.**

**EXHIBIT-P2: THE TRUE PHOTOCOPY OF THE ORDER PASSED BY THE JFMC,
VARKALA ON 23.07.2014.**

RESPONDENT(S)' EXHIBITS

ALEXANDER THOMAS, J.

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O.P.(CrI) 149 of 2015

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Dated this the 22nd day of May, 2015

O R D E R

This Original Petition (Criminal) has been instituted under the provisions of Art.227 of the Constitution of India, seeking the invocation of the visitorial jurisdiction of superintendence vested in this Court. The prayers in the Original Petition are to set aside the impugned Ext.P-2 order rendered on 23.7.2014 in Criminal Miscellaneous Petition No.6942/2014 in Calendar Case, C.C.No. 832/2010 passed by the Judicial First Class Magistrate's Court-I, Varkala, and to allow the petitioner to cross-examine PWs.1 and 2.

2. The petitioner herein is the 2nd accused in C.C.No.832/2010 on the file of the above Magistrate's court. The 1st accused therein is the son of the petitioner herein, who is now employed abroad. The offences alleged are those involving Sec.198-A read with Sec.34 of the IPC. The defacto complainant is the wife of the petitioner's son. The gist of the allegation in the above case is that the petitioner's son married the defacto complainant and that she

was ill-treated and harassed by the petitioner and her son, etc. In the trial of C.C.No.832/2010, PWs.1 and 2 were examined in chief on 12.5.2014. It is averred that the counsel for the accused could not appear before the court on 12.5.2014 as he had to visit Dr.C.J.Bahuleyan, Cardiologist for medical check up and that petition was also submitted before the court below informing that court about the inability of the counsel to attend the court on 12.5.2014. That the petitioner could not cross-examine PWs.1 and 2 since the counsel was not present. That the court was present. That the court closed the evidence of PWs.1 and 2, whereupon the petitioner had filed Crl.M.P.No.6942/2014 in C.C.No.832/2010 on 23.7.2014 with affidavit to recall the witnesses for cross examination. Ext.P-1 is the copy of the said Crl.M.P. No.6942/2014. Ext.P-1 petition was dismissed by the court below as per the impugned Ext.P-2 order on 23.7.2014. It is in the light of these facts and circumstances that the petitioner has preferred the above O.P(Crl.) with the above prayers.

3. It is to be noted that the impugned Ext.P-2 order has been passed as early as on 23.7.2014 and the O.P(Crl.) is filed on 22.5.2015. The developments before the court below subsequent to

the issuance of Ext.P-2 order dated 23.7.2014 have not been stated. This Court was inclined to consider the request of the petitioner on merits, especially taking into consideration her plea that the counsel for the accused was disabled from attending the court so as to cross-examine PW-1 and PW-2 as the said counsel was constrained to visit his cardiologist. But in the absence of averments in this O.P(Crl.) as to the subsequent developments in this case after the passing of Ext.P-2 order dated 23.7.2014, this Court is not properly appraised so as to consider the said prayer on merits. Accordingly, this O.P(Crl.) is closed with liberty to the petitioner to file a fresh appropriate petition stating the subsequent developments before the court below after the issuance of Ext.P-2 order on 23.7.2014, preferably after producing the medical certificate for the absence of the counsel.

With these observations and directions, the O.P(Crl.) stands finally disposed of.

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge

