

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

OP(Crl.).No. 170 of 2015 (Q)

CRL.RP.NO. 31/2013 OF I ADDL.SESIONS COURT, KOLLAM

**CMP.NO. 4696/2013 IN ST.NO.590/2009 OF CHIEF JUDICIAL MAGISTRATE
COURT, KOLLAM**

PETITIONER :

**VALSALA, AGED 45 YEARS,W/O.RAGUKUMAR,
BHADRADEEPAM, VELIKATTU PUTHEN VEEDU,
GANDHI NAGAR-201, AYATHIL, KOLLAM DISTRICT.**

BY ADV. SRI.V.A.AJIVAS

RESPONDENT(S):

**1. K.G.VIJAYAKUMAR,
CINE ARTIST, VYSHNAVAM, KUNNUMPURAM,
NEAR MANJUMEL BRIDGE, EALOOR,
NORTH EDAPALLY, ERNAKULAM DISTRICT. PIN-682 024**

**2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM. PIN-682 031**

R1 BY ADVS. SRI.T.S.RAJAN

SRI.K.ABDUL HAKEEM

R2 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE

**THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD
ON 08-12-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

OP(Crl.).No. 170 of 2015 (Q)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. COPY OF THE COMPLAINT FILED BY THE PETITIONER.
- EXHIBIT P2. COPY OF THE PROCEEDING SHEETS IN THE HONOURABLE CHIEF JUDICIAL MAGISTRATE, KOLLAM.
- EXHIBIT P3. COPY OF THE 311 PETITION FILED BY THE PETITIONER/COMPLAINANT.
- EXHIBIT P4. COPY OF THE DISMISSAL ORDER IN CMP.NO.4696/13 FILED BY THE PETITIONER BEFORE THE HONOURABLE CHIEF JUDICIAL MAGISTRATE, KOLLAM.
- EXHIBIT P5. COPY OF THE DISMISSAL ORDER IN CRL.REVISION PETITION NO.31/13 FILED BY THE PETITIONER BEFORE THE HONOURABLE IST ADDITIONAL SESSIONS JUDGE, KOLLAM.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts

B.KEMAL PASHA, J.

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O.P. (Crl.) No. 170 of 2015

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Dated this the 8th day of December, 2015

JUDGMENT

In a case under Section 138 of the Negotiable Instruments Act, the evidence of the complainant was over and thereafter, the accused filed an application under Section 315 Cr.P.C for his examination. He was examined as defence witness. During his examination, he produced some documents and those documents were marked before the court below. After his examination, the accused filed an application for recalling PW1 for further cross-examination, under Section 311 Cr.P.C. Such an opportunity was availed of and he was allegedly confronted with those documents.

2. The petitioner is the complainant. According to the petitioner, she wants to examine two witnesses to explain the documents produced by the accused. When such an application was filed before the court below

under Section 311 Cr.P.C for reopening the evidence, the court below has dismissed the said C.M.P.

3. A criminal revision was filed against the said order. The revision was also dismissed. On hearing either side, this Court is of the view that when such an opportunity was given to the accused to confront the petitioner with the said documents, the court below should have granted an opportunity to the petitioner to examine two witnesses for explaining the documents. The court below ought to have allowed C.M.P. No.4696/2013.

In the result, this Original Petition is allowed and the orders passed by both the courts below in the matter are quashed. CMP No. 4696/2013 stands allowed. The court below shall give an opportunity to the petitioner to examine those two witnesses as sought for by the petitioner, by giving an opportunity to the accused to cross-examine them.

Sd/-

B.KEMAL PASHA, JUDGE