

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

OP(Crl.).No. 307 of 2014 (Q)

SC 685/2005 of ADDITIONAL DISTRICT AND SESSIONS JUDGE - V, PALAKKAD

PETITIONERS/ACCUSED NOS.2 & 7:

- 1. P.P.SAIDALAVI @ BAVA, AGED 40 YEARS
S/O.MOHAMMED, PUTHENPEEDIKAL HOUSE
PERINGNANADU PO, VILAYOOR , PATTAMBI
PALAKKAD, PIN 679 309**
- 2. ABDUL RAHMAN, AGED 45 YEARS
S/O.ABDUL VAHAB, KINNATHMUKKU, VELLARAMKADAVU
MUTHALAMADA, PALAKKAD**

**BY ADVS.SRI.SOORAJ T.ELENJICKAL
SRI.P.A.MOHAMMED SHAH
SRI.B.PRASANTH
SRI.T.S.SARATH
SMT.P.M.MAZNA MANSOOR**

RESPONDENT/COMPLAINT:

**STATE OF KERALA THROUGH THE DETECTIVE
INSPECTOR, CBCID, KOZHIKODE, REPRESENTED
BY PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM-682031**

**ADDL.R2. SATHYA BHAMA, AGED 49 YEARS
W/O. LATE MANI, PALLASSANA
OZHIVUPARA, PALAKKAD**

**ADDL.2 BY ADV. SRI.S.RAJEEV
ADDL.2 BY ADV. SRI.K.K.DHEERENDRAKRISHNAN
ADDL.2 BY ADV. SRI.V.VINAY
R1 BY PUBLIC PROSECUTOR SRI. REJI JOSEPH**

**THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 16-01-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONERS' EXHIBITS

- EXHIBIT P1 COPY OF THE FIRST INFORMATION REPORT LODGED BY THE POLICE
- EXHIBIT P2 COPY OF THE CHARGE SHEET/FINAL REPORT SUBMITTED BY THE
POLICE IN THE CRIME
- EXHIBIT P3 COPY OF THE DEPOSITION OF PW 18 IN THE CASE
- EXHIBIT P4 COPY OF JUDGMENT DTED 14/10/2014 IN OPCR NO.194/2014 OF THIS
HON'BLE COURT
- EXHIBIT P5 COPY OF PETITION CMP NO.3883/2014 DATED 15/12/2014 FILED ON
BEHALF OF THE 1ST PETITIONER
- EXHIBIT P6 COPY OF PETITION CMP NO.3802/2014 DATED 12/12/2014 ALONG
WITH THE WITNESS LIST FILED ON BELAHF OF THE 2ND PETITIONER
- EXHIBIT P7 COPY OF THE POST-MORTEM CERTIFICATE OF THE DECEASED
- EXHIBIT P8 COPY OF APPLICATION DATED 16/12/2014 FILED BY THE 2ND
PETITIONER
- EXHIBIT P9 COPY OF PETITION FILED BY THE 1ST PETITIONER SEEKING
POSTPONEMENT OF HEARING

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY // P.A. TO JUDGE

SD

P. UBAID, J.

O.P.(CrI) No.307 of 2014

Dated this the 16th day of January, 2015

JUDGMENT

The petitioners herein are the accused in S.C.No.685/2005 of the Court of Session, Palakkad. Trial is now going on before the learned Additional Sessions Judge. The prosecution evidence is over, and the defence has also adduced evidence. Now, after the examination of six witnesses in defence, the accused made two applications under Section 233 Cr.P.C. CrI.M.P.No.3882/2014 was filed to summon the Head of the Department of Forensic Medicine, Government Medical College, Kozhikode, and CMP No.3883/2014 was filed to summon the District Superintendent of Police, Palakkad. The purpose of examination of the District Superintendent of Police, stated by the accused in CMP No.3883/2014, is to prove who the competent officer is to issue direction to destroy documents. As part of defence evidence the accused wanted to prove some General Diary entries, as to who exactly took the deceased to the hospital. Of course, it is, no doubt, a question of fact to be proved by positive evidence, who exactly took the deceased to

the hospital. Any way, the accused wants help by way of General Diary. The Station House Officer was also examined. He deposed that the General Diary is not available in the Police Station. It appears that nobody is certain whether the General Diary is really missing, or whether it stands destroyed. Any way, the accused now wants the District Police Superintendent to come and say who is the competent person to order destruction, if it stands destroyed. I do not know how the District Superintendent of Police will help the accused. If the SHO who is expected to say about the General Diary as to whether the General diary is destroyed, or otherwise missing, has explained satisfactorily how or when it was destroyed, or how it is missing, there ends the matter. The District Superintendent of Police cannot in any manner help the accused. Of course, if the accused are confident that further cross examination of the Station House Officer will clear the doubt that Station House Officer can again be allowed to be summoned. The matter should end there, because defence evidence cannot be allowed to proceed endlessly. Now, coming to CMP No.3882/2014, I find that the purpose of examination of the Head of the Department of Forensic Medicine is to be to prove

some medical aspect in view of some discrepancy in evidence. The application made by the petitioners states that PW47, the District Police Surgeon who conducted postmortem examination on the body of the deceased deposed that "there is no possibility of oozing large quantity of blood from the body of the deceased after sustaining alleged injuries", but some other witnesses deposed that "large quantity of blood oozed from the body of the deceased, and one blanket and another 'Mundu' were being soaked with blood". Thus, on the ground of some discrepancy in the evidence given by the witnesses, the accused wants to examine the Head of the Department of Forensic Medicine. In such circumstances of discrepancy, especially when one witness is the expert in the field it is for the trial court to examine the evidence, and decide whose evidence is acceptable and believable. I find no reason or necessity to examine the Head of the Department of Forensic Medicine, to resolve the said discrepancy. The trial court will have to look into it, and decide whose evidence will have to be accepted.

2. The learned counsel argued on Section 233(2) Cr.P.C., and submitted that the application made by the accused to

summon defence witnesses can be disallowed only if the court is satisfied, or the court finds, that it is made for the purpose of vexation or delay, or for defeating the ends of justice. Of course, the court will have to examine whether such examination will delay the process of defence evidence, which will ultimately cause delay in disposal of the case. In deciding whether it will delay the process, the court will have to look into the purpose for which the witness is sought to be examined. Here, I find that examination of the Head of the Department of Forensic Medicine will not serve any purpose, when there is evidence before the court, given by the expert witness and others. The court will examine and decide what evidence is acceptable, believable and reliable. No doubt, examination of any more witness for the purpose will unnecessarily delay the process, and I find that Crl.M.P.No.3882/2014 was rightly dismissed by the court below.

3. As observed earlier, examination of the District Superintendent of Police as requested by the petitioner in CMP No.3883/2014 cannot be allowed, because that will not serve any purpose. Of course, as observed earlier, it is a fact to be proved by positive evidence as to who exactly took the deceased to the

hospital. When such positive and reliable evidence is there, the General Diary entry will have no relevance or importance. Any way, if the petitioners are confident that they will get help and support from such General Diary entries, they can very well examine the Station House Officer again to elicit the necessary aspects concerning the missing or destruction of the General Diary. The procedure cannot go beyond that. If the petitioners so want, they can recall the Station House Officer for the said purpose, and liberty is accordingly granted to them for the said purpose.

In the result, the O.P.(Crl) is dismissed, however giving liberty to the petitioners to recall the Station House Officer for further examination, if they feel the necessity of such examination to elicit answers and materials concerning the destruction or missing of the General Diary.

Sd/-

P. UBAID, JUDGE

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