



2023/KER/63403

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 12TH DAY OF OCTOBER 2023 / 20TH ASWINA, 1945

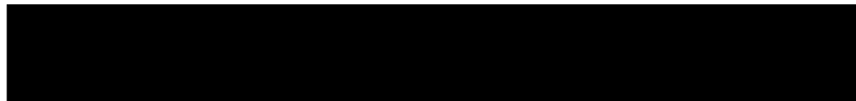
CRL.MC NO. 7845 OF 2023

AGAINST THE ORDER/JUDGMENT CC 21/2014 OF JUDICIAL
MAGISTRATE OF FIRST CLASS, (MUNSIFF MAGISTRATE COURT)

ADIMALI

PETITIONER/S:

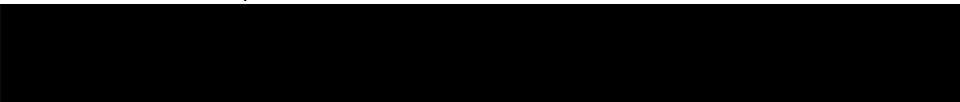
1 K.T. SUKUMARAN, AGED 68 YEARS



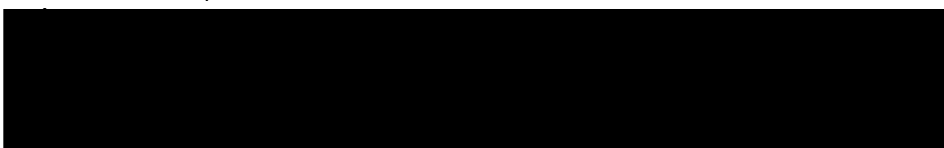
2 V.K. JANARDHANAN, AGED 77 YEARS



3 PRESTEEJ.K.S, AGED 44 YEARS



4 AJIMON K.A, AGED 47 YEARS



BY ADV NIREESH MATHEW

RESPONDENT/S:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM., PIN - 682031

OTHER PRESENT:

SREEJA. V PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 12.10.2023, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

**CR****P.V. KUNHIKRISHNAN, J.**-----
CrI.M.C No. 7845 of 2023
-----Dated this the 12th day of October, 2023**ORDER**

Petitioners are the accused Nos.1 to 4 in CC No.21 of 2014 on the file of the Judicial First Class Magistrate Court, Adimaly. The above case is charge sheeted alleging offences punishable under Sections 406, 420, 465, 471, 477A, 120B read with Section 34 IPC. It is submitted that originally Adimaly police registered the case against the accused and later the investigation was transferred and conducted by the Crime Branch Department, Idukki and the same was renumbered as Crime No.30/CB/2016/IDK.

2. The prosecution case is that accused Nos.1 to 4 with common intention and with a motive to get illegal gain for them and thereby causing loss to the SNDP Union, Adimaly conspired during the period between 01.01.1992 to 24.08.2020 manipulated the accounts of SNDP Union, Adimaly, loan accounts of Self Help Groups (SHGs) and SN Public School, Anachal by using forged documents, misappropriated an amount of Rs. 73,71,683/- and thereby cheated the SNDP Union.



3. After the completion of investigation, the case is pending before the Court below for trial and disposal. While so, the Prosecution filed an application under Section 311 A Cr.P.C before the court below as evident by Annexure 1. The court below allowed the application and directed the accused persons to furnish their specimen handwritings and signatures as evident by Annexure 2 order. By virtue of Annexure 2 order, the accused persons were summoned by the investigating officer for collecting their specimen and sample handwritings. But the investigating officer could not collect the entire specimen and sample handwritings because of the reason that the documents were voluminous in nature and the same requires more time. At that time, the prosecution filed Annexure 3 petition seeking time to complete taking of sample handwritings of the accused. The court below allowed the said petition as per Annexure 4 order. Aggrieved by Annexure 2 and Annexure 4 orders, this CrI.M.C is filed.

4. Heard counsel for the petitioner and the Public Prosecutor.



5. This Court perused Annexure 2 and Annexure 4 orders. These are orders passed invoking the powers under Section 311 A Cr.P.C. It will be better to extract section 311 A Cr.P.C.

“S. 311-A. Power of Magistrate to order person to give specimen signatures or handwriting.

If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting:

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.”

6. A perusal of the above provision would show that the Magistrate can order a person to give specimen signatures or handwriting if the Magistrate is satisfied that for the purpose of investigation or proceedings under the Code, it is expedient to direct any person including an accused to give specimen signature or handwriting. Therefore, firstly, the satisfaction of the Magistrate is necessary that for the purpose of investigation or proceeding under



this Code, it is expedient to direct any person including an accused person to give specimen signature or handwriting. Secondly, the learned Magistrate has to make an order to that effect. A reading of Section 311 A Cr.P.C would show that the Magistrate has to pass a judicial order after application of mind. Simply because an application is filed under Section 311 A, the Magistrate cannot pass a mechanical order without application of mind. A speaking order is necessary from the Magistrate, if he decides to pass an order under Section 311-A Cr.P.C. That is clear from the wordings of the section itself. The first part of the section says that, “If a Magistrate of the First Class is satisfied that”. Second part says that “..... he may make an order to that effect....”. Therefore, the Magistrate while invoking the powers under Section 311-A Cr.P.C should pass a speaking order, after application of mind to the facts and circumstances of the case. The application of mind is necessary because, the Magistrate should be at least prima facie convinced that, such an action would not prejudice the interest of the accused in the facts and circumstances of that case. Article 20(3) of the Constitution says that, no person accused of any offence shall be compelled to be a witness against himself. Therefore, a Magistrate has a statutory duty



to pass a speaking order after application of mind before invoking the powers under section 311 A of Cr.P.C.

7. In this case, Annexure 2 is the order passed by the learned Magistrate. It will be better to extract the same here:

“The application is filed under Section 311(A) Cr.P.C. for taking specimen hand writings and signatures of accused.

2. Heard learned APP and counsel for accused. It is applicable. Copy served to all accused. Allowed in the interest of justice.”

Annexure 4 is the second order passed by the learned Magistrate, which is also extracted hereunder:

“1. The application for allowing more time for completing sample handwriting of accused.

2. Allowed, the voluminous nature requires time. Hence allowed.”

8. Annexure 2 and Annexure 4 are not speaking orders. Therefore, I am of the considered opinion that Annexure 2 and Annexure 4 orders are not orders passed in tune with Section 311-A Cr.P.C. Therefore, these orders are unsustainable and liable to be set aside.



Therefore, this Crl.M.C is allowed. The Order dated 02.08.2023 in CMP No.4008 of 2023 in CC No.21 of 2014 and the order dated 16.08.2023 in CMP No.4317 of 2023 in CMP No.4008 of 2023 in C.C No.21 of 2014 of the Judicial First Class Magistrate Court, Adimaly (Annexure 2 and Annexure 4) are quashed. The learned Magistrate is directed to reconsider those applications in the light of the observations in this order, after giving an opportunity of hearing to the petitioners and the prosecutor concerned.

sd/-

**P.V. KUNHIKRISHNAN
JUDGE**

das



APPENDIX OF CRL.MC 7845/2023

PETITIONER ANNEXURES

- Annexure 1 TRUE PHOTOCOPY OF THE APPLICATION, FILED IN C.C.NO.21/2014 BEFORE THE JUDL. FIRST CLASS MAGISTRATE COURT, ADIMALY, DATED 19.07.2023.
- Annexure 2 CERTIFIED COPY OF THE ORDER DATED 02.08.2023 IN CMP.NO.4008/2023 IN C.C. NO.21/2014 PASSED BY THE JUDL. FIRST CLASS MAGISTRATE COURT, ADIMALY.
- Annexure 3 TRUE PHOTOCOPY OF THE PETITION, CMP. NO.4317/2023 IN CMP.NO.4008/2023 IN CC.NO.21/2014 FILED BEFORE THE JUDL. FIRST CLASS MAGISTRATE COURT, ADIMALY.
- Annexure 4 CERTIFIED COPY OF THE ORDER DATED 16.08.2023 IN CMP.NO.4317/2023 IN CMP.NO.4008/2023 IN CC.NO.21/2014 PASSED BY THE JUDL. FIRST CLASS MAGISTRATE COURT, ADIMALY.