

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

FRIDAY, THE 19TH DAY OF MAY 2023/29TH VAISAKHA, 1945

CRL.MC NO.3884 OF 2023

**AGAINST THE ORDER IN CRL.M.P.NO.2324/2023 IN CC 708/2019
OF JUDL. FIRST CLASS MAGISTRATE COURT, III, NORTH PARAVUR**

PETITIONER/ACCUSED:

PETRO DAVID, AGED 33 YEARS,
S/O. N.P.DAVID, NADUVILAPPARAMBIL HOUSE,
KURIZUMUTTOM BHAGOM, VARAPPUZHA,
ERNAKULAM, PIN - 683517.

BY ADVS.
C.P.UDAYABHANU
NAVANEETH.N.NATH

RESPONDENT/COMPLAINANT:

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

BY ADV.SMT.SANGEETHA RAJ, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 19.05.2023, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

O R D E R

Dated, this the 19th May, 2023

This petition is filed under Section 482 of the Code of Criminal Procedure to set aside Annexure-4 order passed in CMP NO.2324/2023 in C.C.No.708/2019 by the court of the Judicial First Class Magistrate-III, North Paravur to the extent that the court below has vacated the order dated 24.02.2023 in Crl.M.P.No.846/2023, permitting the the petitioner to examine CWs 1 to 4 on the same day, itself.

2. The petitioner's case is that, he is the accused in the above case registered against him by the Station House Officer, Varappuzha, alleging that he has committed the offences punishable under Sections 324, 323, 326 and 294(b) of Indian Penal Code. The petitioner has averred that, after the examination of CW2 as PW1, the petitioner

filed CMP No.846/2023 (Annexure-1) under Section 242(3) of the Code of Criminal Procedure, to permit him to cross-examine all the occurrence witnesses together after recording their chief examination in one stretch. The court below allowed the application by Annexure-2 order. Thereafter, when the case was posted for trial, the petitioner's counsel was engaged in another court and, therefore, could not attend the trial although Cws 1 to 4 were present in court. Infuriated by the absence of the counsel, the learned Magistrate passed Annexure-4 order, vacating Annexure-2 order and imposing a cost of Rs.4,000/- on the petitioner to be paid to Cws 1 to 4 as their day cost. The petitioner is aggrieved by the order, vacating Annexure-2 order. The petitioner contends that the court below has acted in a hasty manner by vacating Annexure-2 order for the sole reason that his counsel was not

present on the day, the case was posted for trial. Hence, the Crl.M.C.

3. Heard; Sri.C.P.Udayabhanu, the learned counsel appearing for the petitioner and the learned Public Prosecutor appearing for the respondent.

4. The learned counsel appearing for the petitioner reiterated the contention in the Crl.M.C. and placed reliance on the decision of the Honourable Supreme Court in ***Sunita Jain v. Pawan Kumar Jain and Others*** [(2008) 2 SCC 705] to drive home his contention that once an order passed by a criminal court, the court become *fuctus officio* and cannot review the order. Thus, Annexure-4 order is erroneous and unsustainable in law, and liable to be interfered by this Court.

5. Having considered the facts and circumstances of the case, and the materials on record, I am of the definite view that the court

below has exceeded its jurisdiction by vacating Annexure-2 order. I say this because, the court below after applying its mind, exercising its discretion and by holding that the injured and the occurrence witnesses have to be examined on the same day, it was unreasonable and unjustifiable on the part of the court below to have vacated the said order for the mere reason that the counsel for the petitioner was absent on the day when the witnesses were examined. This is an addition to the fact the court below had imposed a cost of Rs.4,000/- on the petitioner to meet the expenses of Cws 1 to 4, who were present before the court below and were put to inconvenience.

8. On an overall appreciation of the facts and materials on record, I am of the definite view that the court below has exceeded its authority by passing the impugned order. Thus, I am inclined to exercise the inherent powers of this Court under

Section 482 of the Code of Criminal Procedure to set aside Annexure-4 order to the extent that it has vacated Annexure-2 order.

Resultantly, the CrL.M.C. is allowed as follows:

(i) Annexure-4 order is set aside to the limited extent of vacating Annexure-2 order dated 24.02.2023.

(ii) Annexure-2 order is restored back to file.

(iii) The court below shall fix the date on which Cws 1 to 4 have to be examined and cross-examined as already permitted by Annexure-2 order.

(iv) The counsel for the petitioner shall cross-examine Cws 1 to 4 on the date fixed by the trial court, to get the benefit of this order.

Sd/-

C.S.DIAS, JUDGE

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APPENDIX OF CRL.MC 3884/2023

PETITIONER'S ANNEXURES:

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| ANNEXURE 1 | A COPY OF CMP NO.846/2023 DATED 17.02.2023. |
| ANNEXURE 2 | A COPY OF THE ORDER IN CMP NO.846/2023 DATED 24.02.2023. |
| ANNEXURE 3 | A COPY OF CMP NO.2324/2023 DATED 26.04.2023. |
| ANNEXURE 4 | A CERTIFIED COPY OF ORDER IN CMP NO. 2324/2023 DATED 26.04.2023 PASSED BY THE HON'BLE JFCM COURT-III, NORTH PARAVUR. |
| ANNEXURE 5 | A COPY OF THE CMP NO.2373/2023 DATED 02.05.2023. |
| ANNEXURE 6 | A COPY OF THE ORDER IN CMP NO.2373/2023 DATED 02.05.2023. |