



2024:KER:88661

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 25<sup>TH</sup> DAY OF NOVEMBER 2024 / 4TH AGRAHAYANA, 1946

CRL.MC NO. 9667 OF 2024

CRIME NO.887/2016 OF CHERANELLOOR POLICE STATION, ERNAKULAM

IN C.C. NO.159 OF 2017 OF JUDICIAL MAGISTRATE OF FIRST CLASS - IX,  
ERNAKULAM

**PETITIONER/ACCUSED:**

SURESH RAM P.A  
AGED 39 YEARS  
SON OF ASHOKAN VAIDYAR, POOTHOLIL HOUSE, PONEKKARA P.O,  
EDAPPALLY NORTH VILLAGE, CHERANELLOOR, ERNAKULAM DISTRICT,  
PIN - 682041

BY ADVS.  
C.D.JOHN  
C.C.ANOOP

**RESPONDENTS/STATE/DEFACTO COMPLAINANT:**

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
PIN - 682031
- 2 THE STATION HOUSE OFFICER  
CHERANELLOOR POLICE STATION ERNAKULAM DISTRICT, PIN - 682034
- 3 P.LEELA  
AGED 46 YEARS  
DAUGHTER OF SIVARAMAN SREEPATHI HOUSE, PUDUPPARIYARAM KARA,  
OLAVAKKODE, VILLAGE, PALAKKAD DISTRICT, PIN - 678731

BY ADVS.  
N.M.MADHU  
C.S.RAJANI(K/2275/1999)  
PP - M P PRASANTH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 25.11.2024,  
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**“C.R”****ORDER****Dated this the 25<sup>th</sup> day of November, 2024**

This Criminal Miscellaneous Case has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, challenging the order dated 23.02.2024 in C.M.P. No.690/2024 in C.C. No.159/2017 on the files of the Judicial First Class Magistrate Court-IX, Ernakulam. The petitioner herein is the accused in the above case.

2. Heard the learned counsel for the petitioner, learned Public Prosecutor, in detail. Also heard the learned counsel appearing for the 3<sup>rd</sup> respondent/defacto complainant. Perused the relevant materials available.

3. In this matter, the prosecution alleges commission of offences punishable under Sections 498(A), 420, 494, 354A(i)(iii) of Indian Penal Code.

4. As borne out from the prosecution records, it is noticed that PW1 was originally examined on 19.01.2018, PW2 on 26.02.2018, PW3 and PW4 on 18.04.2018, PW8 on 01.11.2021 and PW9 and PW10 on 02.08.2023. But, none



among the said witnesses were cross-examined by the petitioner, who is the sole accused therein. Earlier as on 04.06.2018, the petitioner filed a petition under Section 311 of Cr.P.C. before the trial court, to recall PWs 1 to 4. The same was allowed on payment of cost of Rs.1,000/- each to the four witnesses. When the witnesses appeared on 29.03.2019 for cross-examination, the petitioner did not pay the cost and accordingly cross-examination was not effected. It is seen from the records that, PW5 to PW7 were cross-examined by the petitioner. Now, the petitioner filed the present petition on 12.02.2024 with prayer to recall PW1 to PW4 and PW8 to PW10 and the learned Magistrate dismissed the same as per the order dated 23.02.2024.

5. According to the learned counsel for the petitioner, recalling of PW1 to PW4 and PW8 to PW10 is absolutely necessary to save the interest of the accused. Therefore, the impugned order requires interference.

6. The learned counsel appearing for the defacto complainant would submit that, the petition to recall the witnesses, filed for the second time, should not be allowed, as sufficient opportunity was given to the petitioner at the



first instance, by allowing the petition under Section 311 Cr.P.C. filed on 04.06.2018 to cross-examine PWs 1 to 4. It is also pointed out that, PWs 1 to 4 were not cross-examined, since the petitioner was not inclined to pay cost of Rs.1,000/- each to the witnesses. The learned counsel for the defacto complainant submitted that, now the petitioner's attempt is to drag the proceedings and to put the witnesses into trouble by recalling and securing their presence, without being examined. Thus, the impugned order is perfectly justified and the same does not require any interference.

7. The learned Public Prosecutor also shared the arguments of the learned counsel for the defacto complainant.

8. On perusal of the records, it is well discernible that, even though, PWs 1 and 2 were examined on 19.01.2018 and 26.02.2018 and the other witnesses on 18.04.2018, 01.11.2021 and 02.08.2023, the petitioner failed to cross-examine the witnesses, except PWs 5 to 7. Thus, deliberate omission on the part of the petitioner in cross-examining PWs 1 to 4 and PWs 8 to 10 could be



noticed from the records. However, it appears that, if the evidence as such of PWs 1 to 4 and PWs 8 to 10 is allowed to be considered by the trial court, without giving another opportunity to the petitioner to cross-examine them, the same is not fair trial, even though reluctance on the part of the petitioner in cross-examining them could be gathered, *prima facie*.

9. Therefore, I am inclined to grant one more opportunity to the petitioner to cross-examine PWs 1 to 4 and PWs 8 to 10, subject to payment of cost of Rs.3,500/- (Rupees Three Thousand Five Hundred Only) each to the witnesses. Accordingly, the impugned order stands interfered and modified, permitting the petitioner to cross-examine PWs 1 to 4 and PWs 8 to 10, on payment of cost to them.

10. The trial court is directed to ensure cross-examination of PWs 1 to 4 and PWs 8 to 10, within a period of four weeks from 05.12.2024, by fixing dates for the same and the petitioner is specifically directed to cross-examine the witnesses on the dates so fixed by the court, without fail. It is made clear that, the cross-examination of the



witnesses shall be after payment of cost ordered by this Court. It is also specifically ordered that, if the petitioner fails to cross-examine the witnesses, as directed by this Court, by using the opportunity to be provided by the trial court, within the stipulated time, the trial court is at liberty to dispose of the case, deeming that the petitioner relinquished his right to cross-examine PWs 1 to 4 and PWs 8 to 10.

In the result, this petition stands allowed as indicated above.

**Sd/-  
A. BADHARUDEEN  
JUDGE**

SK



**APPENDIX OF CRL.MC 9667/2024**

**PETITIONER ANNEXURES :**

**Annexure A1                    THE TRUE COPY OF THE FIRST INFORMATION REPORT  
IN CRIME NO. 887/2016 OF CHERANELLOR POLICE  
STATION**

**Annexure A 2                    THE CERTIFIED COPY OF THE ORDER DATED  
23.2.2024 IN CMP NO. 690/2024 IN C.C. NO.  
159/2017 PASSED BY THE HON'BLE JUDICIAL FIRST  
CLASS MAGISTRATE COURT-IX, ERNAKULAM**

**RESPONDENTS' ANNEXURES :**