

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-1, MAVELIKARA**Present :- Sri, Japhinraj. J.B, Judicial First Class Magistrate – I****Dated this the 29th day of November, 2024.****C M P 2511/2024 in ST 1057/2021**

Petitioner : K. Sasidharan, Krishna vilasam,
Mattom North, Mavelikara.
Respondent : The POA, Mr. James,
Sree Gokulam Chit Funds Pvt. Ltd,
Mavelikara.
(K. Asok Kumar)
Section of Law : U/s. 254(2) of CrPC.

The petition having been heard on 29.11.2024, the court on the same day, passed the following.

ORDER

This is a petition filed under Section 254(2) of CrPC to issue summons to witnesses enumerated in the witness schedule.

2. Petition averments in brief are as follows: Mr. James POA or Mr. Jinesh Vijayan POA are not appearing before this court to prosecute the case. The petitioner wants to know whether this case is being prosecuted with the knowledge of the Board of Directors of the complainant. No valid registered power of attorney is produced before the court, and no resolution copy is also produced. Hence, the court may call the above Mr. James and Mr. Jinesh before this court and record the genuineness. Summons is required to the witness to bring out the entire truth.

3. The respondent filed an objection contending as follows: The petition is not maintainable either in law or on facts. The petitioner is filing petitions one after the other to prolong the case. An amount of Rs. 62,841/- is due from the accused to the complainant. The power of attorney holder and manager were already examined, and the accused was examined under Section 313 of CrPC. The petition filed under Section 311 of CrPC by the accused was

dismissed in the year 2016. Thereafter, the accused has been filing petitions one after the other. The complainant is conducting the case based on a valid resolution. All the petitions filed by the petitioner were dismissed by the trial courts and the honourable High Court. The complainant has complied with all legal formalities, and the power of attorney of the complainant was extensively cross-examined by the accused. Hence, the respondent seeks to dismiss the petition.

4. Heard both sides.

5. **Points that arise for consideration are as follows:**

1. Should summons be issued to the witnesses specified in the witness schedule dated 24.06.2024?
2. What shall be the order?

6. **Point No. 1:** "The petition is filed to issue summons to six witnesses specified in the witness schedule. The 1st and 2nd witnesses are the power of attorney holders of the complainant. The complaint was filed by the 1st witness, and the evidence was adduced from the 2nd witness, who was examined as PW1. The Hon'ble High Court of Kerala in **Thomas v. Vijayakumari**, reported in 2002 KHC 150, has held that an accused cannot seek to examine the complainant as a witness from his side under Section 254(2) of CrPC. The relevant part of the decision is as follows: "*In Sreedhar Pillay v. P.J. Alexander (1992 (2) KLT 349) this Court held that power under S.254(2) conferred on the Magistrate is of wider amplitude than that of the Sessions Judge or Magistrate in a similar situation while trying a sessions case or a warrant case. In the above decision this Court said that under S.233(3) and 243(2) Cr.P.C., the power of the Sessions Judge and the Magistrate to refuse issuance of process is circumscribed by three factors mentioned specifically, namely, vexation, delay or defeating the ends of justice. In both the above decisions, the question whether the term any witness used in sub-s.*

2 of S.254 Cr.P.C. would take in the complainant was not considered. In the decision in Kamarudheens case (supra) that question was considered by the learned single Judge of this Court and said that the words any witness in sub clause would not include the complainant. The position is the same in regard to the meaning of the words any witness appearing in S.254(2) Cr.P.C. The accused has no right to get the complainant examined as a witness on his side. So, no direction need be given to the Magistrate to issue summons to the complainant for being examined as a witness to the petitioner. Application is hence dismissed.' The above decision of the Hon'ble High Court clearly indicates that the petitioner cannot examine the 1st witness. The 2nd witness is also a power of attorney holder of the complainant authorized to conduct the case. His status is also akin to that of the complainant company. The earlier petition filed by the accused under Section 311 of CrPC to recall the 2nd witness (PW1) was dismissed as early as on 08/05/2019. This petition with respect to the 2nd witness seems to be filed to review that order and cannot be allowed.

7. The 5th witness is a staff member of the complainant company who holds a managerial position. The witness is required to be summoned to produce: "P1 cheque of K Sasidharan and the debts and Bank Statement of UBI, Mavelikara". Ext. P1 cheque is present among the records of the case. It is not clear why the 5th witness is being called to submit and prove that document. The bank statement required to be produced does not state the duration nor any account number. The 6th witness is an advocate. The accused seeks to examine him to produce "SBT Cheque No. ____ issued notice by you to K. Sasidharan in connection Gokulam Chits, Mavelikara". The reproduction of the purpose stated by the petitioner for examining the witness itself reveals that it is vague. Even the cheque number is left blank. The description of documents required to be produced by both these witnesses

appears vague and incomprehensible. A witness cannot be summoned to appear before the court with such a vague description.

8. The counsel for the complainant has strongly opposed the prayer of the petitioner to summon any of the witnesses on the ground that the petition is filed with the sole motive of prolonging the proceedings. The third and fourth witnesses are bank managers. The petitioner seeks to examine them to prove his case. **Section 254(2)** of CrPC provides as follows: “The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing.” The above provision indicates that generally, the court should afford the accused all just opportunities to defend his case. Hence, I don’t find any reason to deny the request of the petitioner to issue summons to Witness No. 3 and 4. Therefore, I am of the opinion that summons can be issued to Witness No. 3 and 4. I further find that these witnesses are officials, and the petitioner ought to be directed to deposit in court the reasonable expenses of the witnesses incurred in attending for the purposes of the trial as provided under Section 254(3).

This point is found accordingly.

9. **Point No. 2:** In the result, the petition is allowed in part. Issue summons to Witness No. 3 and 4 on deposit of an amount of Rs. 800/- for each witness.

Pronounced by me in the open court on the 29th day of November, 2024.

Judicial First Class Magistrate-I
Mavelikara