



2025:KER:30115

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

MONDAY, THE 7TH DAY OF APRIL 2025 / 17TH CHAITHRA, 1947

CRL.M.C. NO. 2784 OF 2025

AGAINST THE ORDER DATED 14.03.2025 IN CRLMP 348 OF 2025

IN CC NO.25 OF 2011 OF THE ENQUIRY COMMISSIONER AND

SPECIAL JUDGE (VIGILANCE), THRISSUR

CRIME NO.VC 6/2008 OF VACB, PALAKKAD

PETITIONER/ACCUSED:

A C JAILAVUDHEEN
AGED 76 YEARS
S/O A C KANNI RAWUTHER, MANCHIRA HOUSE ANAMARI
POST, KOLLENGODE, CHITTUR TALUK PALAKKAD, PIN -
678506.

BY ADVS.
S.RAJEEV
V.VINAY
M.S.ANEER
SARATH K.P.
ANILKUMAR C.R.
K.S.KIRAN KRISHNAN
DIPA V.



2025:KER:30115

2

Crl.M.C.No.2784 of 2025

RESPONDENT/STATE:

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

SMT REKHA S, SR PUBLIC PROSECUTOR
SRI A RAJESH, SPL PUBLIC PROSECUTOR (VIG)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR FINAL
HEARING ON 01.04.2025, THE COURT ON 07.04.2025 PASSED THE
FOLLOWING:



2025:KER:30115

Crl.M.C.No.2784 of 2025

P.G. AJITHKUMAR, J.

Crl.M.C.No.2784 of 2025

Dated this the 7th day of April, 2025

ORDER

The petitioner is the accused in C.C.No.25 of 2011 pending before the Court of Enquiry Commissioner and Special Judge, Thrissur. He filed Crl.M.P.No.348 of 2025 under Section 243(2) of the Code of Criminal procedure, 1973 (Code). He wants entries for the period from 01.09.2001 to 30.11.2001 in Ext.P9 cash book to be examined by a handwriting expert for obtaining his opinion as to whether the entries therein except Ext.P9(a) are in the handwriting of the petitioner. The Special Court dismissed that petition as per the order dated 14.03.2025. That order is under challenge in this Crl.M.C. filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).

2. Heard the learned counsel for the petitioner and the learned Senior Public Prosecutor.

3. From a copy of the case status of C.C.No.25 of 2011, which was handed over for my perusal, it is seen that



2025:KER:30115

the evidence on the side of the prosecution was over and the petitioner was questioned as provided under Section 313(1) (b) of the Code. Prosecution witness No.1 was seen recalled and examined further before such questioning. The turn of defence evidence came and then the petitioner has filed Crl.M.P.No.348 of 2025. The case of the petitioner is that he did not make any entry for the period from 01.09.2001 till 30.11.2001 in Ext.P9, except Ext.P9(a) which is only "handed over charge with cash balance of Rs.1,52,267.30". However, PW1 during further re-cross-examination on 19.02.2025, deposed that there were a few entries by the petitioner during the period from 01.09.2001 in Ext.P9 cash book. The petitioner would contend that in order to establish his case that he did not make any entry in Ext.P9 ever after 01.09.2001, a report from a handwriting expert regarding authorship of such entries in Ext.P9 is very much essential.

4. The Special Court took the view that in the nature of the charge levelled against the petitioner, a report of the



handwriting expert as sought by him is quite irrelevant. The charge against the petitioner is that he obtained 200 bags of cattle feed from the Cattle Feed Factory of Milma at Malampuzha on 29.11.2001, which was intended to be distributed among members of the Muthalamada West Milk Marketing Co-operative Society, and instead of doing so, he sold the same to a third person and thereby he misappropriated its cost of Rs.68,000/-.

5. According to the learned counsel for the petitioner, the Special Court went totally wrong in holding that the petitioner was estopped by waiver from calling for report of a handwriting expert, inferably, since he did not raise a similar contention before the arbitration court where the same question was considered. Also, it is submitted that the Special Court took a wrong view that the handwriting or signature in Ext.P9 did not have any relevance and the petitioner failed to convince the court about the necessity to obtain such a report in compliance to the provisions of Section 136 of the Indian Evidence Act, 1872.



6. The arbitration court might have passed an award against the petitioner in relation to the misappropriation alleged in this case. The findings in the said award or the defence set up by the petitioner in that proceedings cannot control or regulate the proceedings in the criminal prosecution. Whether or not the petitioner raised a contention concerning the handwriting in Ext.P9, he can certainly raise such a contention before the Special Court and provisions of Section 243(2) of the Code entitles the petitioner, who is the accused, to call for whatever evidence he deems appropriate to prove his defence, subject to relevance. The Apex Court in **T.Nagappa v Y.R.Muralidhar [(2008) 5 SCC 633]** held in this regard as follows:

"9. What should be the nature of evidence is not a matter which should be left only to the discretion of the Court. It is the accused who knows how to prove his defence. It is true that the court being the master of the proceedings must determine as to whether the application filed by the accused in terms of sub-section (2) of Section 243 of the Code is bona fide or not or whether thereby he intends to bring on record a relevant material. But ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses etc. If permitted to do so, steps therefor, however, must be taken within a limited time. There



2025:KER:30115

cannot be any doubt whatsoever that the accused should not be allowed to unnecessarily protract the trial or summon witnesses whose evidence would not be at all relevant.”

7. This court in **Issac Thomas v. State of Kerala [2010 (3) KLT 56]** held that right to adduce evidence is a very valuable right and it is part of fair trial. Such a right shall not be actually denied. The view taken by this Court in **Mohammed Ashraf v. State of Kerala [2019 (2) KHC 792]** in the above respect is that the limited function of the court in the arena of defence evidence is only to ascertain whether the evidence sought to be adduced by the accused is in respect of the relevant fact. If the evidence proposed by the defence is concerning a relevant fact it is the obligation of the court to afford an opportunity to adduce that evidence.

8. In the view of the above, the consideration is only whether the report of a handwriting expert concerning authorship of various entries for the period from 01.09.2001 to 30.11.2001 in Ext.P9 is a relevant evidence. The function of the trial judge in the light of Section 136 of the Evidence Act is also not different.



2025:KER:30115

9. PW1, who succeeded the petitioner as Secretary of the Co-operative Society, proved Ext.P9. He deposed about various entries in it. Ext.P9(a) is the entry concerning handing over of charge by the petitioner. He does not deny authorship of Ext.P9(a). I have gone through the entire deposition of PW1. No question suggesting that none of the entries in Ext.P9 during the period from 01.09.2001 to 30.11.2001 was made by the petitioner has been put to him during the cross-examination. Only statement he has made in relation to the entries in Ext.P9 after 01.09.2001 is the following statement during further re-cross-examination:

“01-09-2001 മുതൽ ക്യാഷ് ബുക്കിൽ ജയിലാവുദീന്റേ കുറച്ചു എൻട്രി ഉണ്ട്.”

10. The said assertion by PW1 brought out at the instance of the petitioner. The said statement, first of all, is a general statement, which may take in even Ext.P9(a). The petitioner did not choose to deny the said assertion of PW1, nor he asked questions with reference to any specific entry after 01.09.2001 in Ext.P9. In the said circumstances, even if



2025:KER:30115

Crl.M.C.No.2784 of 2025

an opinion of a handwriting expert concerning the authorship of the writings in Ext.P9 during the period from 01.09.2001 to 30.11.2001 is brought, that will not have any relevance either to prove the case of the prosecution or the defence. I refrain from making any further observations in the above regard for avoiding a possible prejudice to the interest of the petitioner. I accordingly find that a report of the handwriting expert as sought by the petitioner is an irrelevant item of evidence and hence the impugned order does not require any interference.

This petition is dismissed.

Sd/-

P.G. AJITHKUMAR, JUDGE

dkr



2025:KER:30115

Crl.M.C.No.2784 of 2025

APPENDIX OF CRL.MC 2784/2025

PETITIONER ANNEXURES

- | | |
|---------------------|---|
| Annexure -I | A TRUE COPY OF THE COURT CHARGE IN CC NO 25/2011 ON THE FILE OF COURT OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE, THRISSUR |
| Annexure II | A TRUE COPY OF THE DEPOSITION OF PW1 IN CC NO 25/2011 ON THE FILE OF COURT OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE, THRISSUR |
| Annexure III | A CERTIFIED COPY OF THE ORDER DATED 14.03.2025 IN CRL MP NO 348/2025 IN CC NO 25/2025 ON THE FILE OF COURT OF THE ENQUIRY COMMISSIONER & SPECIAL JUDGE, THRISSUR |