

(2024) 12 KL CK 0123

High Court Of Kerala

Case No: Criminal Miscellaneous Petition No. 10741 Of 2024

Rahul

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: Dec. 20, 2024

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 233(3)
- Indian Penal Code, 1860 - Section 376(3)

Hon'ble Judges: C. Jayachandran, J

Bench: Single Bench

Advocate: Saijo Hassan, Benoj C Augustin, V.P.Rejitha, Bappu Galib Salam, Abraham J. Kaniyampady, Sangeeth Mohan, Abhijith Nair, Alfiya A., Arundhathi Suresh Babu

Final Decision: Allowed

Judgement

C. Jayachandran, J

1. The petitioner is aggrieved by Annexure-A4 Order of the Fast Track Special Court, Adoor in Crl.M.P.No.318/2024 in S.C.No.124/2021, which

refused the application of the petitioner/accused to examine the defence witness no.2.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor on behalf of the respondent. Perused the records.

3. Learned counsel for the petitioner would submit that the offences alleged involve the one under Section 376(3) of the Penal Code and also under

relevant provisions of the POCSO Act. When the matter posted for defence evidence, the petitioner filed a witness list, of whom the 2nd witness was

the Joint R.T.O., Adoor. He was summoned, in the context of the prosecution evidence that the forensic sample collected from Ottappalam on

23.06.2020 was taken to the destination at Adoor by 8:00 p.m., within a period of 4 ½ hours. This, according to the petitioner, is not possible. In order

to establish the same, the petitioner wants to examine witness no. 2, the Joint R.T.O., especially with respect to the speed limit etc.

4. The same was refused by the learned Sessions Judge, holding that the application under Section 233(3) of Cr.P.C. is only to delay the proceedings.

Another reason found by the Trial Court is that, the proposed witness has no direct knowledge with respect to the journey of PW18 from Ottappalam

to Adoor.

5. It is a salutary principle of law that the accused is entitled to a fair trial, for which all reasonable opportunity will have to be afforded to the accused in

order to be established his innocence. It is not for the Court now to weigh, as to what positive purpose is going to be served by examining additional

witness no.2, the Joint R.T.O. Inasmuch as he is sought to be examined in connection with a purpose, which if established, would go to the benefit of

the accused, the opportunity cannot be denied, is the opinion of this Court. In the circumstances, Annexure-A4 Order is set aside. Learned Special

Judge will allow Annexure-A3 petition, insofar as witness no.2, the Joint R.T.O, is concerned, and shall proceed with the trial in accordance with law.

The Criminal Miscellaneous Case is allowed as indicated above.