



2025:KER:76713

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

THURSDAY, THE 9TH DAY OF OCTOBER 2025 / 17TH ASWINA, 1947

CRL.MC NO. 8016 OF 2025

CRIME NO.947/2022 OF NEDUPUZHA POLICE STATION, THRISSUR

IN SC NO.484 OF 2023 OF ASSISTANT SESSIONS COURT/II ADDITIONAL SUB
COURT, THRISSUR

PETITIONER(S)/PETITIONER/ACCUSED:

DOWN VICTOR,
AGED 35 YEARS
S/O VICTOR, KALLIKKADAN HOUSE, AVINISSERY P.O,AVINISSERY
VILLAGE, THRISSUR, KERALA, PIN - 680306

BY ADVS.
SHRI.SARATH BABU KOTTAKKAL
SMT.ARCHANA VIJAYAN
SHRI.SEBASTIN

RESPONDENT(S)/RESPONDENT/RESPONDENTS/DEFACTO COMPLAINANT:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN -
682031
- 2 JOMON,
AGED 43 YEARS
S/O JOSE, KUTTUKKADAN HOUSE, JAVAHAR ROAD, PALAKKAL DESOM,
PALISSERY VILLAGE, THRISSUR RURAL, KERALA, PIN - 680027

BY ADV. VIPIN NARAYANAN, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09.10.2025,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



C.R.

ORDER

Dated this the 09th day of October, 2025

The petitioner is the accused in S.C.No.484 of 2023 on the files of the Assistant Sessions Court, Thrissur, wherein he is facing prosecution for offences punishable under Sections 341, 323, 324, 294(b) and 308 of the Indian Penal Code. The petitioner had engaged a Counsel of his choice to defend him. During the trial of the case, on 11.12.2023, the date on which CW1 was to be examined, the petitioner's Counsel relinquished his Vakalath. As a result, the petitioner was compelled to cross-examine PWs 1 and 2 on his own. Later, the petitioner engaged a close relative as his Counsel, who, after reading the deposition of the witnesses, found various infirmities and advised the petitioner to file a petition to recall the witnesses for further cross-examination. Accordingly, the petitioner filed Annexure A7 application, praying to recall PWs 1 and 2 for further cross-examination. The court below having



dismissed the application *vide* Annexure A8 order, this Crl.M.C is filed.

2. Learned Counsel for the petitioner submits that, after the earlier Counsel relinquished the Vakalath, his impecunious circumstances disabled the petitioner from engaging another Counsel immediately. The petitioner was therefore compelled to cross-examine the prosecution witnesses on his own. The petitioner not being a legally trained person, there were many follies in the cross-examination.

3. It is contended that by rejecting the application, the court below denied the right to fair trial guaranteed to the accused. As the petitioner was not in a position to engage a Counsel of his choice when his earlier Counsel relinquished the Vakalath, the trial court was duty bound to inform the petitioner about his right to get a pleader engaged by the court, as mandated in Section 304 of the Cr.P.C. Further, Article 39A of the Constitution of India imposes a duty on the State to provide free legal aid to needy citizens. Reliance is also placed on the decision of



the Apex Court in ***Khatri and Others v. State of Bihar and Others*** [1981 KHC 517] to buttress the contention.

4. According to the learned Public Prosecutor, the petitioner having decided to conduct the case on his own, the court cannot compel him to engage a Counsel assigned by the State.

5. The short question is whether in a trial before the Court of Sessions, it is mandatory to inform the accused about his right to be defended by a Counsel assigned by the court, if the accused is found incapable of engaging a counsel of his choice. The answer to the question can only be in the affirmative in view of Section 304(1) of the Cr.P.C, extracted below for easy reference;

“304. Legal aid to accused at State expense in certain cases.—

(1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State.”

The above provision is in tune with Article 39A of the Constitution of India, which envisages grant of free legal



aid to the needy by the State. As held by the Apex Court in ***Hussainara Khatoon and Others (IV) v. Home Secretary, State of Bihar, Patna*** [(1980) 1 SCC 98], the right to free legal services is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and implicit in the guarantee of Article 21. The State is under a constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require. In ***Khatri and Others*** (supra), the Supreme Court has held the State to be under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence.

6. A perusal of the proceedings of the trial court from 11.12.2023 onwards, the date on which the petitioner's earlier Counsel relinquished his Vakalath, reveals that the court had not put the petitioner on notice regarding his right to be defended by a pleader assigned by the State. Even if it is for the accused to decide whether he wants to conduct the case himself or through a lawyer assigned by



the court, while taking that decision, the accused should be aware about the options available to him. The court below having failed to alert the petitioner about the option of conducting the case through an Advocate assigned by the court, he was left with no option but to cross-examine the prosecution witnesses on his own, being unable to engage a Counsel of his choice. In such circumstances, denial of the prayer for recalling the witnesses will militate against the right to fair trial.

In the result, the Criminal Miscellaneous Case is allowed and Annexure A8 order, quashed. The court below shall recall PWs 1 and 2 and the petitioner's Counsel shall cross-examine the witnesses on the day fixed by the court.

Sd/-

V.G.ARUN

JUDGE



APPENDIX OF CRL.MC 8016/2025

PETITIONER ANNEXURES

- ANNEXURE A1** TRUE PHOTOCOPY OF THE FIR & FIS IN CRIME NO. 947/2022 OF NEDUPUZHA POLICE STATION, THRISSUR DATED 28.11.2022
- ANNEXURE A2** TRUE PHOTOCOPY OF THE S.161 STATEMENTS OF CW1 & CW2 IN CRIME NO. 947/2022 OF NEDUPUZHA POLICE STATION, THRISSUR
- ANNEXURE A3** TRUE PHOTOCOPY OF THE RELEVANT PAGES OF THE FINAL REPORT IN CRIME NO. 947/2022 OF NEDUPUZHA POLICE STATION, THRISSUR DATED 22.12.2022
- ANNEXURE A4** TRUE PHOTOCOPY OF THE WITNESS MEMORANDUM IN CRIME NO. 947/2022 OF NEDUPUZHA POLICE STATION, THRISSUR DATED 22.12.2022
- ANNEXURE A5** TRUE PHOTOCOPY OF THE DEPOSITION OF PW1 DATED 23.02.2024
- ANNEXURE A6** TRUE PHOTOCOPY OF THE DEPOSITION OF PW2 DATED 14.03.2024
- ANNEXURE A7** TRUE PHOTOCOPY OF THE PETITION 21.02.2025
- ANNEXURE A8** TRUE PHOTOCOPY OF THE ORDER DATED 19.08.2025 IN CRL.M.P 230/2025 IN SC 484/2023 OF THE ADDITIONAL ASSISTANT SESSIONS JUDGE - II, THRISSUR

TRUE COPY

P.A. TO JUDGE