

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

SATURDAY, THE 21ST DAY OF NOVEMBER 2015/30TH KARTHIKA, 1937

Cr1.MC.No. 138 of 2015 ()  
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CC 991/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COUR,VAIKOM

CRIME NO. 980/2013 OF THALAYOLAPARAMBU POLICE STATION, KOTTAYAM

PETITIONER(S)/ACCUSED NOS. 1 & 2:  
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1. SIDHIQUE AGED 69 YEARS  
S/O. KAYI, CHIRAYIL HOUSE, VADAYAR VILLAGE  
THALAYOLAPARAMBU KARA, KOTTAYAM DISTRICT.

2. SHANAVAS, AGED 43 YEARS  
S/O. SIDHIQUE, CHIRAYIL HOUSE, VADAYAR VILLAGE  
THALAYOLAPARAMBU KARA, KOTTAYAM DISTRICT.

BY ADV. SRI.M.REVIKRISHNAN

RESPONDENT(S)/DEFACTO COMPLAINANT AND STATE:  
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1. NAZAR, AGED 47 YEARS  
S/O. ABDUL RAZAK, MANGALATH HOUSE, VADAYAR VILLAGE  
THALAYOLAPARAMBU KARA, KOTTAYAM DISTRICT  
NOW RESIDING AT VADAKKEMANGALATH HOUSE  
KUMARAMANGALAM VILLAGE, VENGALLOOR KARA  
THODUPUZZHA-685584.

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

R2 BY PUBLIC PROSECUTOR SHRI. JIBU P. THOMAS

R1 BY ADV. SRI.SIVARAM

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
21-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 138 of 2015 ()

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APPENDIX

PETITIONER(S) ' EXHIBITS

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ANX.A. TRUE COPY OF THE PRIVATE COMPLAINT PREFERRED BY THE 1ST  
RESPONDENT HEREIN BEFORE THE COURT OF JUDICIAL MAGISTRATE OF  
THE FIRST CLASS, VAIKKOM.

ANX.B. TRUE COPY OF THE FINAL REPORT IN CRIME NO. 980/2013 OF  
THALAYOLAPARAMBU POLICE STATION, KOTTAYAM DISTRICT.

RESPONDENT(S) ' EXHIBITS

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ANNEXURE R1:E-MAIL DATED 23.3.2013

ANNEXURE R2:WITHDRAWAL FORM DATED 23.3.2013

ANNEXURE R3:ACKNOWLEDGMENT LETTER DATED 23.3.2013

ANNEXURE R4:MAHAZAR DATED 23.12.2013

/TRUE COPY/

P.A. TO JUDGE

SKV

K.RAMAKRISHNAN, J.

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Crl. M.C. No.138 OF 2015

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Dated this the 21<sup>st</sup> day of November, 2015

ORDER

This is an application filed by the petitioners who are the accused Nos1 and 2 in C.C. No.991/2014 to quash the proceedings under Section 482 of the Code of Criminal Procedure.

2. The case of the petitioner in the petition was that petitioners are father and son and 1<sup>st</sup> respondent is the nephew of the 1<sup>st</sup> accused and uncle of the 2<sup>nd</sup> accused. The case was originated on the basis of a private complaint filed by the 1<sup>st</sup> respondent against the petitioners alleging offences under Sections 465, 467, 468, 471, 420 and Section 120(B) of the Indian Penal Code alleging that the accused persons conspired and withdrawn the amount of the 1<sup>st</sup> respondent by sending an email from the e-mail account of the complainant from the bank without his knowledge. The complaint was forwarded to the Police by the learned Magistrate under Section 156(3) of Code of

Criminal Procedure and on that basis a crime was registered as crime No.980/2013 of Thalayolaparambu Police Station and after investigation, Annexure B final report was filed before the Judicial First Class Magistrate's Court Vaikkom, where it was taken on file as CC No.991/2014. According to the petitioners even if the entire allegations are accepted there is no criminal offence made out. It is purely a civil dispute and no proper investigation has been conducted to find out whether the petitioners had sent the e-mail to the bank. No scientific investigation has been conducted to find out the sender of e-mail from the e-mail account of the defacto complainant and possibility of conviction is remote and they prayed for quashing the proceedings.

3. The 2<sup>nd</sup> respondent filed detailed counter denying the allegations and they also submitted that during investigation, it was revealed that email communication was sent from the email account of the complainant to the bank and the amount was withdrawn by 1<sup>st</sup> accused with the connivance of the 2<sup>nd</sup> accused.

4. 1<sup>st</sup> respondent entered appearance through counsel and submitted that the matter has been referred for Mediation and in the Mediation the disputes between the parties have been settled and Mediation agreement has been entered into stating that all the pending cases between the parties which arose on account of this transaction has been settled between the parties and they do not want to proceed with the case.

5. Heard the counsel for the petitioner Shri. Ravikrishnan and counsel for the 1<sup>st</sup> respondent Shri. Sivaram and learned public prosecutor Sri. Reji Joseph appearing for the State.

6. Both the counsel for the petitioner and 1<sup>st</sup> respondent submitted that in the Mediation, entire matter has been settled and 1<sup>st</sup> respondent has no objection in quashing the proceedings as the entire amount due to him has been paid and his grievance is only that the amount has been withdrawn without his consent. He does not want to prosecute the petitioners as they are his relatives and on

account of the settlement, the family relationship has been restored as before.

7. The Public Prosecutor opposed the application on the ground that it is a case of forgery against the bank and it cannot be treated as an individual offence between the private parties.

8. It is an admitted fact that petitioners and 1<sup>st</sup> respondent are close blood relatives. The 1<sup>st</sup> respondent is the nephew of the 1<sup>st</sup> accused and 2<sup>nd</sup> respondent accused is son of the 1<sup>st</sup> accused, who is the 1<sup>st</sup> petitioner herein. The grievance of the 2<sup>nd</sup> respondent was that misusing the email account of the complainant, a mail was sent by the 1<sup>st</sup> accused to the bank from the email account of the 1<sup>st</sup> respondent and an amount of Rs.1,00,000/- was withdrawn by the 1<sup>st</sup> respondent. When this came to the knowledge of the 1<sup>st</sup> respondent, he filed Annexure-I private complaint before the Judicial First Class Magistrate Court-Vaikom which was forwarded to the Police for investigation under Section 156(3) of the Code of Criminal Procedure and Crime

No.980/2013 of Thalayolaparambu Police Station was registered against the petitioners under Sections 465, 467, 487, 120(B) and 420 of the Indian Penal Code. After investigation, Annexure-B final report was filed before the Judicial First Class Magistrate Court, Vaikom and it was taken on file as CC No.991/2014 and that is pending before that court.

9. During the pendency of the proceedings considering the fact that the parties are relatives, this Court by order dated 9.10.2015, referred the matter for Mediation and the matter has been sent to Ernakulam Mediation Center and the matter has been settled between the parties and a report has been received from the Mediator along with the Memorandum of agreement entered into between the parties. Though Mediation as such is not a procedure to be followed in a criminal matter for settling the issues, when civil disputes are also pending between the parties in respect of the same transaction and civil disputes has been given the colour of criminal offence then if the parties want

to settle their issues, the matter can be sent for Mediation and if settlement is arrived at between the parties that can be taken note of by the court for the purpose of invoking the power under Section 482 of the Code for quashing the proceedings, as though the petition was filed for quashing the proceedings on the basis of settlement. In the decision reported in *Gian Singh v State of Punjab* [2012 (4) KLT 108] the Supreme Court has held that in cases where family disputes involved or there are disputes between the family members on the basis of which crimes have been registered and due to the intervention of well wishers or mediators if the matter has been settled between the parties, though a criminal offence of non-compoundable nature is made out, in order to promote the settlement and restoration of family relationship, court can invoke the power under Section 482 of the Code of Criminal Procedure and quash the proceedings.

10. In this case it is a case between the uncle and nephew and it is a monetary dispute between the parties

alleged to be misused by allegedly sending a document through the e-mail account of the respondent. There were civil dispute between the parties in respect of the same issues and in the Mediation, all the disputes have been settled between them and their original family relationship has been restored. Though it is alleged that an e-mail was sent to the bank by first respondent and relying upon the email said to have been sent, 1<sup>st</sup> petitioner alleged to have withdrawn the amount, the bank has not made any complaint regarding the same. Then it will become a private dispute between the parties as no public money is involved and it is only a dispute between the relatives in respect of the money that has been said to have been withdrawn from the account of 1<sup>st</sup> respondent. It is also submitted by both the counsels that on the basis of the terms of settlement amounts have been arrived at and the amounts have been paid also. So the 1<sup>st</sup> respondent had availed the benefit of mediation and he was recouped with loss sustained by him on account of the act said to have

been committed by the petitioners as well. Not only that the family relationship has been restored as well. On account of the settlement possibility of conviction in this case is remote as neither the complainant nor his witnesses will support the case of the prosecution. Further it is seen that there is no scientific evidence collected to find out as to who had sent the email encroaching into the domain of the 1<sup>st</sup> respondent by crashing his email account to get the amount as well. So under the circumstances even if the case is allowed to proceed with, there is no possibility of conviction as well. Allowing the case to proceed will only amount to wastage of judicial time. So this court feels that it is a fit case where the power under Section 482 of the Code of Criminal Procedure has to be invoked to quash the proceedings so as to promote the mediation settlement that has been arrived at between the parties which restored the family relationship and the pendency of this case should not be a hurdle for their harmony in the family relationship.

So the application is allowed and further proceedings

in CC 991/2014 of the Judicial First Class Magistrate's Court  
Vaikkom against the petitioners is quashed.

Office is directed to communicate this order to the  
concerned court immediately.

Sd/–  
K.RAMAKRISHNAN, JUDGE

SKV