

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

Crl.MC.No. 357 of 2015 ()

**IN CC 2378/2009 of ADDL.C.J.M., ERNAKULAM
CRIME NO. 573/2006 OF ERNAKULAM SOUTH POLICE STATION , ERNAKULAM**

PETITIONER(S)/ACCUSED:

**CHACKO JOSEPH AGED 70 YEARS
S/O. JOSEPH, RESIDING AT KALLARACKAL HOUSE
MANNAMTHURUTH, VARAPUZHA P.O., - 683 517
PARAVUR VILLAGE, ELOOR TALUK.**

**BY ADVS.SRI.REJI GEORGE
SRI.GOPAKUMAR G. (ALUVA)
SRI.UMESH.N.PAI
SRI.BINOY DAVIS**

RESPONDENT(S)/COMPLAINANT:

- 1. STATE REPRESENTED BY PUBLIC PROSECUTOR
HON'BLE HIGH COURT OF KERALA.**
- 2. COCHIN SHIPYARD LTD
REPRESENTED BY ITS DEPUTY GENERAL MANAGER (MATERIALS)
KOCHI - 682 015.**

**R2 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R2 BY ADV. SRI.P.GOPINATH
R2 BY ADV. SRI.P.BENNY THOMAS
R2 BY ADV. SRI.K.JOHN MATHAI
R2 BY ADV. SRI.JOSON MANAVALAN
R2 BY ADV. SRI.KURRYAN THOMAS
R1 BY PUBLIC PROSECUTOR SMT. P. MAYA**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05-03-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 357 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

A - A CERTIFIED COPY OF THE FINAL REPORT SUBMITTED BY THE 3RD RESPONDENT.

B - A TRUE PHOTOCOPY OF THE JUDGMENT DT. 31.01.09 PASSED BY THE HON'BLE SUBORDINATE COURT, ERNAKULAM IN OS NO. 274/07.

C - A TRUE PHOTOCOPY OF THE MEDICAL CERTIFICATE ISSUED BY DR.SREERAM PRASAD A.V, CONSULTANT NEUROLOGIST, LOURDES HOSPITAL.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No.357 of 2015

Dated this the 5th day of March, 2015.

O R D E R

The petitioner herein has been facing prosecution in C.C No.2378 of 2009 of the Additional Chief Judicial Magistrate Court, Ernakulam, under Section 420 IPC on a complaint made by the second respondent herein, alleging monetary loss to the Shipyard and monetary gain to the petitioner due to breach of a contract in between them. The petitioner seeks orders quashing the prosecution on the ground that it is only a case of breach of contract having only civil consequences, and that there is absolutely nothing in the complaint for a prosecution under Section 420 IPC.

2. I heard both sides and perused the final report in this case, and also the complaint made by the second respondent. I find that what is essentially alleged is breach of a contract having civil consequences and inviting civil remedies. A suit filed by the second respondent against the petitioner herein for recovery of money on the allegation of such breach stands dismissed by the learned Principal Subordinate Judge,

Ernakulam. Annexure B is copy of the judgment in the said suit. In such a situation, continuance of the prosecution will be abuse of legal process. The prosecution cannot reach anywhere with this prosecution when necessary elements and ingredients of the offence under Section 420 are not there in the final report. It appears that the Cochin Shipyard thought of a short cut to bring a prosecution for realization of the money and the Cochin Shipyard brought such a complaint with the full knowledge that it is only a case of breach of contract having only civil consequences. I find nothing to proceed on the criminal side. The prosecution is accordingly, liable to be quashed.

In the result, this petition is allowed. The prosecution against the petitioner herein in C.C No.2378 of 2009 before the Additional Chief Judicial Magistrate Court, Ernakulam will stand quashed under Section 482 Cr.P.C.

P.UBAID,
JUDGE