IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

Crl.MC.No. 457 of 2015 ()

AGAINST CRIME NO. 495/2014 OF THAMARASSERY POLICE STATION AND PROCEEDINGS IN C.C.NO.971/2014 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, THAMARASSERY
..

PETITIONER(S)/ACCUSED :

P.V.RAGHUNATH, AGED 61 YEARS, S/O.VELANDI,
PETTIKKATTIL, KEDAVOOR DESOM, RAROTH VILLAGE,
P.O.THAMARASSERY, KOZHIKODE TALUK AND DISTRICT.

BY ADVS.SRI.P.R.SREEJITH
SRI.M.PRAMODH KUMAR

RESPONDENT(S)/COMPLAINANT AND STATE :
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1. **STATE OF KERALA**
   REPRESENTED BY PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM - 682 031.

* **ADDL. R2 IMPLEADED**

2. **P.SHAJI, AGED 39 YEARS, S/O.VELAYUDHAN,**
   POYILIL HOUSE, THAMARASSERY P.O.,
   KOZHIKODE.

* **R2 IS IMPLEADED AS ADDITIONAL 2ND RESPONDENT AS PER ORDER DATED 16.02.2015 IN CRL.M.A. NO.964/2015 IN CRL.M.C.NO.457/2015**

ADDL.R2 BY ADV. SRI.T.G.RAJENDRAN
R1 BY SMT.SAREENA GEORGE, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 03-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

AMV

Crl.MC.No. 457 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS :

ANNEXURE 1: COPY OF THE LAWYER NOTICE DATED 8/2/2013 ISSUED BY THE PETITIONER.

ANNEXURE 2: COPY OF THE REPLY DATED 2/3/2013 TO ANNEXURE 1 LAWYER NOTICE.

ANNEXURE 3: COPY OF THE PETITIONER'S COMPLAINT DATED 16/3/2013 BEFORE THE JFCM, IRINJALAKKUDA.

ANNEXURE 4: COPY OF THE FIR AND CHARGE SHEET IN CRIME NO.495/2014 OF THE THAMARASSERY POLICE STATION.

ANNEXURE 5: COPY OF THE PETITIONER'S COMPLAINT DATED 12/11/2014 BEFORE THE STATE HUMAN RIGHTS COMMISSION.

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A.TO JUDGE

AMV

ALEXANDER THOMAS, J.

Crl.M.C. No. 457 of 2015

Dated this the 3rd day of June, 2015

ORDER

The petitioner herein is the sole accused in crime No.495/2014 of the Thamarassery Police Station registered for the offences punishable under Section 3 and 4 read with 17 of the Money Lenders Act, 1958 and Section 20 of the Indian Penal Code, initiated at the behest of the 2nd respondent herein (de facto complainant).

2. The police after investigation submitted the impugned Annexure-4 final report/charge sheet in the above said Crime No.495/2015 which was led to the institution of CC No.971 of 2014 on the file of the Judicial First Class Magistrate Court-I, Thamarassery.

3. The petitioner essentially challenges the above said impugned criminal proceedings at Annexure-4 on the ground that this amounts to a grave abuse of the process of the court.

4. The factual background for raising this contention is as follows; The petitioner had earlier sent Annexure-1 lawyer notice dated 08.02.2013 to the 2nd respondent herein stating that the latter had owed an amount of Rs.1,50,000/- from the

petitioner on account of transaction between them and in that regard the 2nd respondent had issued cheque dated 30.01.2013 for an amount of Rs.50,000/- to the petitioner and the said cheque was dishonoured. Consequently the statutory notice under Section 138 of the Negotiable Instruments Act was issued by the petitioner as per Annexure-1.

5. In reply to Annexure-1 notice dated 08.02.2013, the 2nd respondent caused to issue Annexure-2 reply notice dated 02.03.2013 wherein the specific and unequivocal case of the 2nd respondent is that the 2nd respondent never knew the petitioner in any manner whatsoever and that he has absolutely no transaction or relationship with the petitioner and he is in no way responsible for the issuance of the cheque for Rs.50,000/- in favour of the petitioner etc. The petitioner thereafter instituted a private criminal complaint for the offence punishable under Section 138 of NI Act against the 2nd respondent herein (as accused) which led to the pendency of C.C.No.9275 of 2013 as borne out by Annexure-3 private complaint dated 16.03.2013. It is long thereafter that on 04.07.2014, the 2nd respondent had submitted the petition to the Station House officer concerned alleging that there were money transactions between the petitioner and the 2nd

respondent, which had started from January 2010 and that the 2nd respondent had cleared off the entire amount due to the petitioner. But the petitioner herein has not returned the cheque given by the latter as security even though the 2nd respondent had cleared off the entire amount and that the petitioner has also indulged in unlawful money lending activities. This form the basis of First Information Statement that led to the registration of Annexure-4 FIR in CC No.495 of 2014 of Thamarassery Police Station, Kozhikode rural district wherein the petitioner herein is arrayed as an accused, alleging offence under Section 420 of the Indian Penal Code and Section 3 and 4 r/w 17 of the Money Lenders Act.

6. The police after investigation submitted the impugned Annexure-4 final report/charge sheet in the above said impugned crime No.495/2014 against the petitioner and this had consequently led to the institution of CC No.971/2014 on the file of the Judicial First Class Magistrate Court-I, Thamarassery. It is these proceedings arising out of the impugned Annexure-4 final report/charge sheet, that is under challenge in this case.

7. The petitioner has also contended that the above said initiation of the impugned criminal proceedings is an

abuse of the process of the court more so because he was arrested by the police in connection with the impugned crime. It is further stated that on account of this action of the police authorities, the petitioner has already approached the Kerala State Human Rights Commission, as borne out by Annexure-5 complaint.

8. Heard Sri.P.R.Sreejith, the learned counsel for the petitioner and Sri.T.G.Rajendran, the learned counsel for the 2nd respondent and Smt.Sareena George, the learned public prosecutor for the 1st respondent.

9. The short point that arises for consideration is as to whether the impugned Annexure-4 is an abuse of the process of the court. The unequivocal and clear case put forward by the 2nd respondent earlier as per Annexure-2 reply notice dated 02.03.2014 of that he had absolutely no connection or transaction with the petitioner and that he did not even know the petitioner personally in any manner whatsoever and that he did not have any transaction and consequently that he did not owe any money from the petitioner. This was the specific stand taken by the 2nd respondent in Annexure-1 lawyers notice dated 08.02.2013 issued by the petitioner in respect of the very same cheque, which is the subject matter of the complaint

in the impugned Annexure-4. After the issuance of Annexure-2 reply notice of the 2nd respondent, the petitioner had initiated a private criminal complaint against the 2nd respondent as evident from Annexure-3 complaint dated 16.03.2013. It is long thereafter that the present impugned criminal proceedings are set in motion at the instance of the de facto complainant projecting an entirely different and completely contradictory version that he had consistent transactions with the petitioner herein since January 2010 and that he had cleared off the entire amount but the petitioner had unlawfully withheld the very same cheque and the petitioner is also engaging in money lending activities etc.

10. When assessing situations in the case on hand in the background of the plea for invocation of the inherent jurisdiction under Section 480 of Cr.P.C., this Court has to take into account the overall admitted conduct of the parties concerned especially in matters primarily involved in monitary transactions. The clear and unequivocal stand of the 2nd respondent in Annexure-2 reply notice on 02.03.2013 was that he never knew the petitioner that he had no transactions whatsoever with the petitioner, it is nothing shown of a grave abuse of the process of the court in initiating impugned

criminal proceedings at Annexure-4; wherein he comes up with a totally new story that he was all along having private transactions with the petitioner since January 2010 but the entire transactions were closed later, and that the petitioner had unlawfully involved in the money lending transaction etc. The sanctity of the process of the criminal courts should not be allowed to be abused in this manner as it would pollute the streams of justice that is to flow through the criminal courts of law. Therefore this Court has no doubt whatsoever that invocation of the inherent powers conferred under Section 482 of Cr.P.C., is justified in this case.

11. In this view of the matter the impugned criminal proceedings at Annexure-4 final report/charge sheet filed in Crime No.495/2014 of the Thamarassery Police Station, which led to the institution of CC No.971 of 2014 on the file of the Judicial First Class Magistrate Court-I, Thamarassery and all further proceedings arises therefrom pending against the petitioner will stand quashed.

12. It is made clear that the observations and findings in this judgment shall not in any way trammel or influence the conduct of the trial in Annexure-A3, A4 & A5 private criminal complaint for the offence under Section 138 of the NI Act. It is

also equally made clear that the findings and directions in this order will not in any way influence or trammel the pending proceedings before the said Kerala State Human Rights Commission as shown at Annexure-5. This Court was constrained to adjudicate this issue primarly to decide as to whether the initiation and continuance of the impugned Annexure-4 criminal proceedings. Therefore needless to say the findings and directions issued in this case are solely and exclusively within the frame work of the factual matrix in relation to that plea.

With these observations and directions this criminal miscellaneous case is finally disposed of.

Sd/-
ALEXANDER THOMAS
JUDGE

AMV/06/06/