

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

CrI.MC.No. 869 of 2015

**CRIME NO. 57/2015 OF THIRUVALLA POLICE STATION,
PATHANAMTHITTA DISTRICT**

PETITIONER(S)/ACCUSED 1 & 2 :

- 1. SANTHOSH MANI, AGED 32 YEARS,
S/O.SELVAMANI, SANTHOSH BHAVAN,
ULIYAZHATHURA VILLAGE, CHEMBAZHANTHI MURI,
THIRUVANANTHAPURAM DISTRICT.**
- 2. DAVID LALY, AGED 53 YEARS,
S/O.DAVID, SHARON HOUSE, NEAR GOOD SHEPHERD,
ARAMADA P.O, KUNNAPPUZHA, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY**

RESPONDENT(S)/STATE/ DEFACTO COMPLAINANT :

- 1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM- 682 031, (CRIME NO.57/2015 OF THIRUVALLA POLICE
STATION, PATHANAMTHITTA DISTRICT)**
- 2. MADHUSOODHANAN E.G., AGED 56 YEARS,
S/O.GANGADHARAN NAIR, INDAMTHURUTHIL, NEERETTUPURAM,
THALAVADI VILLAGE, KUTTANAD TALUK,
ALAPPUZHA DISTRICT- 689 572.**

R1 BY PUBLIC PROSECUTOR SMT.P.MAYA

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 05-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE I:** CERTIFIED COPY OF THE PRIVATE COMPLAINT FILED BY THE 2ND RESPONDENT BEFORE THE JUDICIAL MAGISTRATE OF FIRST CLASS, THIRUVALLA.
- ANNEXURE II:** CERTIFIED COPY OF THE FIR IN CRIME NO.57/2015 OF THIRUVALLA POLICE STATION
- ANNEXURE III:** COPY OF THE AGREEMENT BETWEEN THE FIRST PETITIONER AND SECOND RESPONDENT DATED 04.07.2014
- ANNEXURE IV:** COPY OF THE LAWYER NOTICE ISSUED TO THE SECOND RESPONDENT.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

PA.TO JUDGE.

Msd.

B.KEMAL PASHA, J.

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CRL.M.C. No.869 of 2015

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Dated this the 5th day of October, 2015

ORDER

The 1st petitioner has entered into an agreement for sale of his property, with the 2nd respondent herein. Out of an amount of ₹1,00,00,000/- fixed as consideration, an amount of ₹60,00,000/- was paid by the 2nd respondent to the 1st petitioner as part of consideration and advance. Even though, Lawyer's notice was caused to be issued by the 1st petitioner herein to the 2nd respondent, demanding the 2nd respondent to pay the balance sale consideration and to get the sale deed executed, the 2nd respondent has not turned up. On getting the notice, he has chosen to file a private complaint before the Judicial First Class Magistrate's Court, Thiruvalla alleging offences punishable under Sections 405, 406, 415, 417 and 420 IPC read with Section 34IPC, on the ground that there was subsisting liabilities with regard to the property and

the liabilities were not cleared.

2. In fact, the property was subjected to equitable mortgage with a Bank and SARFAESI proceedings were initiated by the Bank. By way of One Time Settlement, the entire claim of the Bank was cleared by the 1st petitioner herein and it was after that the Lawyer's notice was issued. On going through the matter, it seems that the dispute is purely civil in nature. The private complaint filed by the 2nd respondent is not maintainable and therefore the same is liable to be quashed.

In the result, this CrI.M.C. is allowed and Annexure II First Information Report in Crime No.57 of 2015 of the Thiruvalla Police Station and all further proceedings based on it are hereby quashed.

Sd/-

B. KEMAL PASHA
JUDGE

DSV/6/10/15

// True Copy //

P.A. To Judge