IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

Crl.MC.No. 1338 of 2015

CC 484/2014 OF CHIEF JUDICIAL FIRST CLASS MAGISTRATE COURT, THRISSUR.
CRIME NO.404/06 OF TOWN EAST POLICE STATION, THRISSUR.
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PETITIONER/1ST ACCUSED:
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RAVEENDRANATH, AGED 49 YEARS,
S/O.LEELLAMMA, POZHATH HOUSE,
MANNAMPETTA DESOM, AMBALLUR VILLAGE,
THRISSUR DISTRICT.

BY ADVS.SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA
SRI.K.D.SREEVISAKH

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

2. **CANARA BANK, THRISSUR MAIN BRANCH,**
   REP. BY ITS MANAGER,
   THRISSUR DISTRICT - 680 001.

R1 BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

mbr/

Crl.MC.No. 1338 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES:
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ANNEXURE A:	**CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.404/2006 OF TOWN EAST POLICE STATION.**
ANNEXURE B:	**CERTIFIED COPY OF JUDGMENT DTD. 31/7/2014 IN C.C 212/2006 ON THE FILE OF CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR.**

RESPONDENT(S)' ANNEXURES: - NIL
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/TRUE COPY/

P.S. TO JUDGE

mbr/

P.UBAID, J.

Crl.M.C No.1338 of 2015

Dated this the 13th March, 2015

O R D E R

The petitioner herein is the original first accused in C.C.No.212/2006 of the Chief Judicial Magistrate Court, Thrissur. Crime in the said case was registered by the Thrissur Town East Police under Section 420 IPC, on the complaint of the Manager of Canara Bank, Thrissur branch. The prosecution allegation is that the petitioner and the co-accused availed bank loan by offering some property as security, but by deceiving the bank, they furnished another property of lesser value, and later committed default in making payment of the amount in instalments. The original 2nd accused faced trial before the learned Magistrate in C.C.No.212/2006, and obtained a judgment of acquittal on 31.07.2014, when the prosecution failed to adduce any satisfactory evidence proving the essentials and ingredients of the offence alleged. The case against the petitioner herein was split up and refiled as C.C.No.484/2014. He now seeks orders quashing the prosecution on the ground that the very substratum of the prosecution case stands totally lost by the acquittal of the others, on merit. It is reported that there is no appeal against the judgment of acquittal in favour of the 2nd accused in C.C.No.212/2006. Annexure-B copy of the judgment in C.C.No.212/2006 shows that the prosecution examined ten witnesses and marked Exts.P1 to P5 documents, but nobody gave evidence to prove the offence of cheating. In paragraph 7 of the judgment, the learned Chief Judicial Magistrate found thus, as regards the essentials of the offence and the evidence adduced by the prosecution to prove the said offence:

> "But a mere failure to discharge the liability in a loan transaction shall not attract an offence of cheating unless it is shown that the accused had dishonest intention at the time of availing loan. Here, the factum of availing loan and subsequent failure to discharge the loan liability stands established. But the allegation that whether the second accused had any dishonest intention at the time of availing loan stands not established. Of course, intention being a mental aspect has to be gathered from the circumstances. Here an item of property was admittedly mortgaged and subsequently the same was sold pursuing recovery methods. But the property fetched only a lesser amount than the liability. According to the prosecution PW6 the valuer of the bank had assessed the property for a higher value and valuation was so made since a different property was shown to him at the time of inspection. But, unfortunately the prosecution has not produced the valuation report, inspection report or other relevant materials for showing that a different

> property was inspected for the purpose of valuation."

Again in the said paragraph, the learned Magistrate found thus, as regards the allegation that another property of lesser value was deceitfully offered his security.

> "It is quite strange to contend that the bank officials were deceited by the accused showing another property. How it is possible? The property has to be verified by the bank officials with reference to the description and boundaries in the deed. Inspite of that, if the bank officials were misled by the accused they could have adduced sufficient evidence to those aspects. But no such evidence is forthcoming."

In the very same paragraph, concluding the findings the learned Magistrate found thus:

> " After scanning the evidence, this Court has no hesitation to find that there is no material against the accused to show that she had defrauded the bank either by availing loan or by showing a different property for valuation."

2. On a perusal of the Annexure-B judgment, I find that the other accused obtained a judgment of acquittal when the prosecution miserably failed to prove the essentials of the alleged offence. What is at the most proved by the prosecution is default in making payment of the loan amount in instalments. This will have only civil consequences. I find that the substratum of the prosecution case stands totally lost, and

the prosecution cannot in any manner improve the case factually or legally, if it proceeds for trial against the petitioner herein. I find that in the above circumstances, continuance of the prosecution will be a sheer waste of time, and it is liable to be closed.

In the result, this petition is allowed. Prosecution as against the petitioner in C.C.No.484/2014 of the Chief Judicial First Class Magistrate Court, Thrissur will stand quashed under Section 482 Cr.P.C.

Sd/-

P.UBAID, JUDGE

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