

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

Cr1.MC.No. 1399 of 2015

IN C.C NO.114/2013 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
MANJERI

CRIME NO. 982/2012 OF MANJERI POLICE STATION, MALAPPURAM

PETITIONER/2ND ACCUSED:

NOUSHAD N.K, AGED 37 YEARS,
S/O.ALAVI, KASTHOORI VEEDU,
ANAKKAYAM, MANJERI,
MALAPPURAM DISTRICT.

BY ADVS.SRI.BABU S. NAIR
SRI.R.RANJITH (K/489/2011)

RESPONDENT/STATE:

THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM
KOCHI - 682 031 - FOR THE SUB INSPECTOR OF POLICE,
MANJERI POLICE STATION, MALAPPURAM.

BY PUBLIC PROSECUTOR SMT.P.MAYA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 25-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 1399 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE-A: COPY OF THE CHARGE IN CRIME NO.982/2012 ON THE
MANJERI POLICE STATION.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.1399 of 2015

Dated this the 25th day of March, 2015

O R D E R

The petitioner herein is the 2nd accused in C.C No.114/2013 of the Chief Judicial Magistrate Court, Manjeri, involving the offences under Sections 406 and 420 of the Indian Penal Code. The matter is concerning a hypothecation agreement between the first accused and the ICICI Bank, Kozhikode. In breach of the conditions of the hypothecation agreement, the first accused sold away the vehicle purchased by utilizing the loan amount. The petitioner herein is being prosecuted as second accused on the allegation that in the said process of sale, in breach of the agreement between the first accused and the Bank, the second accused helped the first accused. It is not known how such a prosecution is possible against the second accused. It is well settled that breach of an agreement, or sale of the subject matter of the hypothecation agreement by itself will not attract a prosecution under Sections 406 and 420 of the Indian Penal Code. There must be a definite

material to show that the debtor sold the vehicle with some dishonest intention to cause wrongful loss to the Bank. Even such a material is not possible as against the second accused because the offence alleged against him is that knowing about the hypothecation agreement fully well he helped the first accused in selling the vehicle. If at all a prosecution is possible against the first accused on the allegation of dishonest intention under Sections 406 and 420 of the Indian Penal Code, the second accused can be proceeded against as co-accused only if there is something to show that he had also some dishonest intention to share with the first accused. Just because he helped the first accused fully knowing well about the agreement, he cannot be held liable under Sections 420 or 406 of the Indian Penal Code. May be that he had the full knowledge of the agreement, and also violation of the terms of the agreement. Such knowledge will not by itself make him liable under Sections 420 or 406 of the Indian Penal Code. There must be some material to show that the second accused had also some dishonest intention to share with the first accused. In the absence of any such material, the prosecution against him as co-accused will be clear abuse of legal process.

In the result, this Criminal Miscellaneous Case is allowed. The prosecution against the petitioner herein as second accused in C.C No.114/2013 of the Chief Judicial Magistrate Court, Manjeri will stand quashed under Section 482 of the Code of Criminal Procedure. The said prosecution will proceed against the first accused.

**P.UBAID
JUDGE**

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