IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

Crl.MC.No. 1663 of 2015 ()

CC 720/2012 of CHIEF JUDICIAL MAGISTRATE COURT, KALEPETTA

PETITIONER/ACCUSED NO.4 :

GEETHA K. P., AGED 42 YEARS,
W/O. P.V.MUKUNDAN, PERICHERIVALAPPIL HOUSE,
MUTTIL P.O., WARIYAT, WAYANAD - 673 122.

BY ADVS.SRI.M.R.ANISON
SMT.T.B.REMANI
SMT.P.A.RINUSA

RESPONDENTS/STATE :
----

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

2. OFFICIAL LIQUIDATOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

R1 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE
R2 BY ADV. SRI.K.MONI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 10-06-2015 ALONG WITH CRMC NO. 1664/2015 & CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

bp

Crl.MC.No. 1663 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

A1: CERTIFIED COPY OF THE COMPLAINT DATED NIL FILED ONE SHRI.SAIFUDEEN.

A2: CERTIFIED COPY OF THE FIR NO. 419/11 OF THE KALPETTA POLICE STATION.

A3: CERTIFIED COPY OF THE FINAL REPORT SUBMITTED BEFORE THE CHIEF JUDICIAL MAGISTATE COURT, KALPETTA.

A4: TRUE COPY OF THE JUDGEMTN DT. 23.9.11 IN CP NO. 8/201 OF THIS HON'BLE COURT.

A5: TRUE COPY OF THE IDENTITY CARD ISSUED BY THE DISTRICT EXECUTIVE OFFICER DT. 01.01.08.

A6: TRUE COPY OF THE RELIEVING ORDER DT. 21.01.11 ISSUED BY THE MANAGING DIRECTOR OF THE COMPANY.

A7: TRUE COPY OF THE APPOINTMENT ORDER DT. 15.1.11 ISSUED BY THE OFFICE OF THE CHAIRMAN AND MANAGING DIRECTOR, K.S.R.T.C

A8: TRUE COPY OF THE APPOINTMENT ORDER DT. 21.7.12 ISSUED BY THE DISTRICT MEDICAL OFFICER (HEALTH), WAYANAD.

A9: A TRUE COPY OF THE ORDER DT. 24.2.15 IN CRL.M.C NO. 3091/13 OF THIS HON'BLE COURT.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

ALEXANDER THOMAS, J.

==================

Crl.M.C No. 1663, 1664, 1667,1668,1669, 1892,1901,1902, 1903, 1904, 1905, 1906, 1918, 1919, 1920, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071 and 2072 of 2015

==================

Dated this the 10th day of June, 2015

O R D E R

The petitioner in these 27 Crl.MCs is the accused No.4 in the 27 Calender Cases concerned, viz, C.C Nos. 716, 720 of 2012, C.C No.s 52, 53, 68 of 2013, C. C No.s 176, 177, 179, 180, 181, 185, 186, 187, 189, 284, 358, 359, 362, 371, 374, 375, 399, 400, 401, 414, 444 and 445 of 2014 on the file of the Judicial Magistrate Court-II, Sulthan Bathery, Wayanad District for offence under Sections 406, 420 r/w 34 of the I.P.C. and Section 3 and 4 of the Kerala Chitty act 1975. The impugned final reports in all these cases are almost similarly or identically worded and the imputation made is in connection with the petitioner's mere involvement as an employee of a Chit Company. The main accused in these cases are the respective directors of the Company and the petitioner was only a clerical employee of the Chit company and except making vague and generalized averments in the impugned final report/charge sheet, no incriminating allegations are made even in the final report /

charge sheet so as to connect the petitioner who was only a clerical staff, with the alleged commission of the offence by the directors of the Company. Several crimes were registered as against the Company directors as well as the present petitioner on account of complaints given by various persons. This court in Crl.M.C No.3091/13 arising out of C.C No.711 of 2012 of the Court of Chief Judicial Magistrate's Court, Kalpetta had considered the identical issue regarding the alleged criminal culpability of the petitioner was only an employee and held that the impugned criminal proceedings are liable to be interdicted by exercise of the powers under Sections 482 of the Code of Criminal Procedure. The said final order is produced in all these cases and the said order dated 24.2.2015 in Crl.M.C No.3091/2013 (in which the very same petitioner who is the petitioner and was accused in connected C.C No. 711/2012 for the similar or identically worded charges) reads as follows:

> *"The petitioner herein is the 4th accused in C.C No.711 of 2012 of the Chief Judicial Magistrate's Court. Kalpetta, involving the offence punishable under Section 420 of Indian Penal Code. She was a clerical staff of one Chitty Company by-name M/s.Sreekovil Chits Pvt. Ltd, Kalpetta. Now she is a Clerk-Typist in the Health Department of Kerala. She resigned from the Chitty Company on 18.12.2011. The accused Nos.1 to 3 are respectively the Managing Director, the Assistant Director and the Director of the said Chitty Company. In June,*

2011, different complaints came from the subscribers against the persons running the chitty company. On those complaints, the Police registered crimes under Section 420 of Indian Penal Code and after investigation, the Police Submitted final report under Section 420 of I.P.C against the Directors including the Managing Director and also the petitioner herein, on the allegation that she was Office Assistant-cum-Manager of the Chitty Company and she had some role in the alleged misappropriation of amounts and cheating. The petitioner now seeks orders quashing the prosecution on the ground that she was only an employee of the company, and that she had no role at all in the dealings of the company except as a clerical staff, and she had not appropriated any amount from the funds of the company during her tenure as clerical staff.

2. I heard both sides and perused the materials including the complaint made by the subscribers and also the final report submitted by the police. The petitioner has produced some documents showing that she was only a clerical staff of the Chitty Company, and that she had resigned on 18.12.2011. On a perusal of the different complaints, which led to the registration of crime, I find that no complaint contains definite allegation against the petitioner herein. The definite allegations are against the other accused Nos.1 to 3, who are the Managing Director, the Assistant Director and the Director of the Chittty Company. The final report submitted by the police does not show how the petitioner had any vicious role in the alleged transaction of misappropriation or cheating. The final report also does not explain how a clerical staff could involve in the alleged misappropriation or cheating. It appears that the Police proceeded against her and submitted final report just because she was also a staff of the company. As a staff, she can be prosecuted only if there are definite materials implicating her in the alleged dealings and dishonest misappropriation of the funds of the company. But here, I find nothing to implicate here, or to show that she had any involvement or role in the alleged transactions or dealings. The persons, who conducted the Chitty Company are the accused Nos.1 to 3. Normally, they must be held liable and responsible for the acts and deeds of the company including misdeeds and misappropriation. A clerical staff or other staff of the company can be prosecuted only if there is definite material to show that clerical staff had some role in the alleged transaction. Here there is no material against the petitioner herein. The final report shows that she was Office Assistant-cum-Manager, but the materials produced by the petitioner show that she was only a clerical staff. The Police has not produced anything to show that the petitioner herein was the Manager of the Chitty Company. Even as per the prosecution records, the management of the Chitty Company was in the hands of the 1st accused as Managing

> *Director. It is not known how the petitioner happened to be prosecuted as Manager when she was only a clerical staff. Thus, on a perusal of the entire prosecution records, I find nothing to implicate the petitioner herein in the transaction of misappropriation or cheating alleged against the accused Nos.1 to 3 as Managing Director, the Assistant Director, and the Director of the Company, which cheated many subscribers. I find that the prosecution against the petitioner herein is liable to be quashed in the absence of any material against her.*
>
> *In the result, this petition is allowed. The prosecution against the petitioner herein in C.C No.711 of 2012 of the Chief Judicial Magistrate's Court, Kalpetta will stand quashed under Section 482 of the Code of Criminal Procedure. Accordingly, the petitioner will stand released from prosecution, and the bail bond if any, executed by her will stand discharged."*

2. On going through the impugned FIR and the impugned final report/charge sheet in all these cases, the issue is fully covered in favour of the petitioner by the considered view taken by this Court in the final order dated 24.2.2015 in connected Crl.M.C No.3091/2013. In this view of the matter, the impugned Criminal proceedings arising out of all these calender cases and all further proceedings arising therefrom pending against the petitioner in these matters stand quashed.

Accordingly, all these Crl.M.Cs stand finally disposed of.

Sd/-

sab ALEXANDER THOMAS, JUDGE