

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

Crl.MC.No. 1716 of 2015

CRIME NO. 165/2004 OF KURATHIKADU POLICE STATION , ALAPPUZHA

PETITIONER(S)/4TH ACCUSED:

**TOJI K.DAVID, AGED 32 YEARS,
S/O.DAVID, CHERUVATHARA HOUSE, PERINGAMALA.P.O.
MAVELIKKARA, ALLEPPEY DISTRICT.**

BY ADV. SRI.K.R.SUNIL

RESPONDENT(S)/COMPLAINANT:

- 1. STATE OF KERALA THROUGH
THE SUB INSPECTOR OF POLICE,
KURATHIKADU, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA-682 031.**
- 2. SATHYA DEVAN, AGED 60 YEARS
S/O.DAMODHARAN, MANOJ BHAVAN, PALLICKAL,
NADUVELEMURI, MAVELIKKARA-690 101.**

R1 BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 28-07-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

Crl.MC.No. 1716 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES

**ANNEXURE A1- THE FIRST INFORMATION REPORT DATED 16.07.2004, JUDICIAL
FIRST CLASS MAGISTRATE COURT, MAVELIKKARA.**

**ANNEXURE A2- THE FINAL REPORT SUBMITTED BEFORE THE JUDICIAL FIRST
CLASS MAGISTRATE COURT, MAVELIKKARA DATED 28/6/05 IN CRIME
NO.165/04**

RESPONDENT(S)' ANNEXURES

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ALEXANDER THOMAS, J.

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Crl.M.C.No.1716 of 2015

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Dated this the 28th day of July, 2015

O R D E R

The prayer in this Criminal Miscellaneous Case instituted under Sec.482 of the Code of Criminal Procedure praying for invocation of the inherent powers conferred on this Court as per that provision, is for an order from this Court to quash the impugned Anx. A-2 final report/charge sheet filed in the impugned Anx.A-1 Crime No.165/2004 of Kurathikadu Police Station, Alappuzha district, for offences registered under Sec.420 read with Sec.34 of the I.P.C. pending against the petitioner and all further proceedings arising therefrom pending against the petitioner. The petitioner is accused No.4 in the impugned criminal proceedings, in which Anx.A-2 final report/charge sheet has been filed.

2. The gist of the allegation raised in the impugned Anx.A-1 FIR is that A-1 being the proprietor of the M/s.Athira Financiers, having office at Pallikkalnaduvile Muri, Mavelikkara Taluk, along with his employees, accused Nos.2 to 5, during the period from March 1998 to December, 2003 received money from the defacto

complainants and others to the tune of rupee three cores under various deposits with the dishonest intention to cheat the public and misappropriated the said money. After completion of the investigation, the impugned Anx.A-2 final report/charge sheet has been filed in respect of the above said crime. The gravamen of the charges raised in the impugned Anx. A-2 final report/charge sheet, as evident from column No.16 of Anx.A-2 as given on pages 13 and 14 of the paper book, is that A-1 is the proprietor of the Athira Financiers, and A-2 to A-5 are working as employees of the 1st accused. That in October, 2003, CW-1 deposited Rs. 1000/- and on 8.9.2003 Rs.100/- was deposited each in the deposit scheme vide Nos.311A and 312A in the said financial concern in the names of his two grandchildren amounting to Rs.2,200/-. That A-1 has received the said amount and did not pay back the same on maturity and the accused thereby cheated CW-1 with their common intention.

3. The gist of the statement given by the defacto complainant, as given on 21 of the paper book, is that he had joined the chitty conducted by the Athira Financiers run by Sri.Bhuvanendran and he joined two chitties and in one such he remitted eleven instalments and in another chitty 13 instalments were remitted at the rate of Rs. 100/- per instalment. That the

proprietor of the financial concern has not given receipts and that the defacto complainant does not know whether the proprietor (A-1) had licence to conduct the chitty business. That A-1 had closed the Athira Financiers and gone somewhere and that he does not know where his family is. That the defacto complainant has lost Rs. 1,100/- in one chitty and in another chitty Rs. 1,100/- in respect of the said finance concern. etc. Thus it can be seen that though the allegation in the impugned Anx. A-1 FIR is that the money involved is to the tune of rupees three crores, the version projected in the statement of the defacto complainant, given on page 21 of the paper book, is entirely different and comes to the range of his having remitted Rs.1100/- in one chitty and another Rs. 1100 in another chitty, etc. The case projected in the impugned Anx. A-1 FIR is that the transaction had taken place between March, 1998 and to December, 2003, whereas the case projected in column 16 of the Anx.A-2 charge sheet (see pages 14 and 15 of the paper book) is that the transaction had taken place some time in October, 2003 and that too, for limited amount of Rs. 1100/- each in two chitties, etc. Thus there is wide contradiction in the very case projected in the impugned FIR on the one hand and the impugned final report/charge sheet on the other hand. Moreover, a reading of the

aforestated Anx.A-1 FIR and Anx.A-2 final report/charge sheet would show that the allegations are predominantly directed mainly against accused No.1 (proprietor of M/s.Athira Financiers) and except for making an averment that accused Nos.2 to 5 are the employees of A-1, no specific act or conduct are specifically alleged against the employees like the petitioner (A-4) to rope him in the alleged criminal culpability. Moreover, none of the witnesses cited in Anx.A-2 has tendered any specific statement alleging any specific acts of criminal culpability as against the petitioner.

4. In this view of the matter, this Court is of the considered opinion that the continuance of the impugned criminal proceedings would amount to abuse of the process of the court and appears to be vexatious. Accordingly, in the interest of justice, it is ordered that the impugned Anx.A-2 final report/charge sheet filed in the impugned Anx.A-1 Crime No.165/2005 of Kurathikadu Police Station, Alappuzha district and all further proceedings arising therefrom pending to the extent it is directed against the petitioner will stand quashed.

With these observations and directions, the Crl.M.C. stands finally disposed of.

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///True copy///

P.S. to Judge

Sd/-
ALEXANDER THOMAS, JUDGE

Cr1.M.C.1716/15

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