

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

Crl.MC.No. 871 of 2013 ()

CRIME NO.944/2012 OF NADAKKAVU POLICE STATION, KOZHIKODE

PETITIONER(S)/ACCUSED:

SUSHEEL KUMAR KODENCHERY
MANAGING DIRECTOR
M/S.KALPETTA JANAKSHEMA MARUTHI CHITS PVT.LTD.
SITHARA BUILDING, EAST NADAKKAVU, KOZHIKODE DISTRICT.

BY ADV. SRI.ANEESH JOSEPH

RESPONDENT(S)/COMPLAINANT:

STATION HOUSE OFFICER
NADAKKAVU POLICE STATION
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, KOCHI-31.

BY PUBLIC PROSECUTOR SRI.K.K.RAJEEV

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 27-02-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 871 of 2013

APPENDIX

PETITIONER'S EXHIBITS :

ANNEXURE A1 : TRUE COPY OF THE COMMUNICATION FROM THE DYSP TO THE SHO, NADAKKAVU POLICE STATION.

ANNEXURE A2 : CERTIFIED COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.944/12 OF NADAKKAVU POLICE STATION.

//TRUE COPY//

P.A.TO JUDGE

ami/

V.K.MOHANAN, J.

Crl.M.C.No.871 of 2013

Dated this the 27th day of February, 2015.

O R D E R

The sole accused in Crime No.944/12 of Nadakkavu Police Station preferred the above petition under section 482 of Cr.P.C. with a prayer to quash Annexure A2 FIR in Crime No.944/12 of Nadakkavu Police station.

2. The prosecution allegation in the above crime is that, on conducting search in the firm conducted by the petitioner/accused, it is realised that the said firm is conducting chit business against the provisions under the Chit Funds Act, 1982, during the period between 1.5.2012 to 28.11.2012. Consequently, the respondent herein registered Crime No.944/12 against the petitioner for the offences punishable under sections 4, 5, 8, 9, 19 and 20 r/w 79 of the Chit Funds Act 1982. Annexure A2 is the FIR in the above crime. Along with the petition, Annexure A1

letter issued by the Deputy Superintendent of Police, Crime Branch, CID EOW II, Kozhikodu, Sub Unit, Kannur, is also produced in the above M.C. According to the petitioner, as the above referred offences are non cognizable offences, no crime would lie against the petitioner and no investigation can be conducted without orders from the competent Magistrate.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

4. The learned counsel for the petitioner on the strength of the decision in reported in **Ahammed Manaf v. Sub Inspector of Police (2010(4) KLT 837)** submitted that in the present case also, the section of offences alleged against the petitioner are only non cognizable one and therefore no crime would lie and no FIR would lie against the petitioner. The learned Public Prosecutor resisting the contention, submitted that the offences alleged against the petitioner are serious one and therefore let the investigation be completed.

5. I have carefully considered the rival contentions advanced by the learned counsel for the petitioner and the learned Public Prosecutor.

6. On a perusal of the various provisions contained in the Chit Funds Act 1982, it can be seen that, except Section 11 of the above Act, all other penal provisions are non cognizable offences. The said fact is more clear in view of section 80 of the above Act, which reads as follows :

“Cognizance of offences -- (1) All offences under Section 11 shall be cognizable.

(2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try an offence punishable under this Act.”

As no charge or no allegation subsists against the petitioner that he had committed offences under section 11 of the Chit Funds Act 1982, according to me, no FIR would lie against the petitioner. In the decision cited supra, particularly in paragraph 5 it is reported that,

“5. Section 155 of Code of Criminal Procedure provides the procedure to be followed in a case where

information of a non-cognizable offence was received by an officer in charge of the police station and for its investigation. Under sub-s.(1), when information is given to an officer in charge of a police station, of the commission within the limits of such station, of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer, in such form as the State Government may prescribe and refer, the informant to the Magistrate. Sub-s.(2) mandates that no police officer shall investigate a non-cognizable case, without the order of a Magistrate having power to try such case or commit the case for trial. As an offence under S.4 of Kerala Prohibition of Ragging Act is only a non cognizable offence, on receipt of a complaint of the commission of an offence under S.4 of the Act, the officer in charge of the police station is not competent to register the case. He cannot investigate the case without the order of a competent Magistrate."

In the absence of any specific allegation or material to show that the petitioner has committed the offences punishable under section 11 of the Chit Funds Act 1982, which alone, as per Section 80 of the above Act, is cognizable, this Court find no justification in registering Annexure A2 FIR. Consequently, the same is liable to be quashed in terms of the prayer in the M.C.

In the result, this M.C. is allowed quashing Annexure A2 FIR. It is made clear that quashing of Annexure A2 will

not stand in the way of the prosecution agency in taking appropriate action against the petitioner.

Sd/-
V.K.MOHANAN,
Judge.

ami/

//True copy//

P.A.to Judge