IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

Crl.MC.No. 1493 of 2007 ( )

PETITIONER(S)/ACCUSED:
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1. **MOHAMMED JIFRI @ ADHIL,**
   S/O.K.N.MOHAMMED, K.N.HOUSE, BAKEL
   KUTTIKULAM, KASARAGOD.

2. **JALEEL MOHAMMED,**
   S/O.RAKKANDAN MOHAMMED, 43/00 PERUMBALA, KASARAGOD.

   BY ADV. SRI.S.RAJEEV

RESPONDENT(S):

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM
(CRIME NO.32/CR-KNR-2001 CBCID, KASARAGOD).

R1 BY ADV. PUBLIC PROSECUTOR SRI.MADHU BEN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

lmp

Crl.MC.No. 1493 of 2007 ( )

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE 1. CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.32/Cr-KNR-2001 CBCID, KASARAGOD.

ANNEXURE II. PHOTOCOPY OF TRANSLATION OF CHARGE SHEET SUBMITTED BEFORE THE HON'BLE XXI METROPOLITAN MAGISTRATE AT HYDERABAD.

ANNEXURE III. COPY OF ORDER DATED 30.10.2009 PASSED BY THE XII ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, HYDERABAD, IN CC NO.124/2001.

ANNEXURE IV. COPY OF ORDER DATED 30.10.2009 PASSED BY THE XII ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, HYDERABAD, IN CC NO.123/2001.

ANNEXURE V. COPY OF ORDER DATED 30.10.2009 PASSED BY THE XII ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, HYDERABAD, IN CC NO.126/2001.

RESPONDENT(S)' EXHIBITS - NIL
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P.A. TO JUDGE

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K.HARILAL, J.

Cr.M.C. No.1493 of 2007

Dated this the 21st day of January, 2015

ORDER

The petitioners are accused Nos.7 &10 in Crime No.32/2001 of the CBCID, Kasaragode. Originally the crime was registered by Manjeswaram Police as Crime No.215/1999 for the offence punishable under Sections 457,511 and 380 of the Indian Penal Code. The crime was registered against unknown persons on the basis of the allegation that in between 8.09.1999 and 9.9.1999, somebody has made attempts to break open the door of Vijaya Bank and attempted to commit theft. The first information statement was given by the clerk who is working in that bank. Later, the case was transferred to CBCID for investigation and after investigation the respondent has submitted charge sheet against 10 accused persons alleging offence punishable under Section 411 read with Section 34 of the Indian Penal Code. In the final report the charge against petitioners and others is that knowing that the Demand draft (DD) leaves were thieved by some persons, mis-used the DD leaves and attempted to cheat the prosecution witnesses 16,14 and 17 and thereby committed the offence punishable under Section 411 read with Section 34 of the Indian Penal Code. This Criminal MC was filed under Section 482 of the Code of Criminal Procedure mainly on three grounds.

2. The learned Counsel for the petitioner on the basis of the grounds raise it in this Criminal MC submits that, on the same set of facts another crime was registered by Detective Department CCS, Hyderabad, alleging the offences punishable under Sections 468, 471, 420 and 120 B IPC as charge sheet No.125 of 2000, against the petitioners and in that case, after trial the petitioners have been acquitted of the said offences alleged against them. Therefore, they are entitled to get the benefits under the principles of res judicata and estoppal. To fortify this point, the learned Counsel for the petitioner cited **1981 KLT 372 Jayamohan** v **State of Kerala**.

3. Secondly, the learned Counsel further contends that the cognizance of the offence taken by the learned Magistrate is barred by limitation under Section 468 of the Code of Criminal Procedure. According to the learned Counsel, the crime was registered on 9.9.1999 and the final report was filed on 30.07.2005 and the learned Magistrate took the final report on the files on 8.09.2005. The maximum punishment that can be given to an accused for an offence punishable under Section 411 is imprisonment of either description for a term which may extend to 3 years or with fine or with both. Therefore, no cognizance can be taken for an offence under Section 411 of the Indian Penal Code after 3 years. But in the instant case the cognizance had been taken after 5 years. Thirdly, the learned Counsel submits that no offence under Section 411 of the Indian Penal Code can be made out against the accused, unless the person who has committed the offence under Section 380 had been brought under prosecution.

4. Per contra the learned Public Prosecutor

submits that the transaction which constituting the offence in the instant case and the Crime No.32 of 2001 registered at Hyderabad are entirely different and distinct. Secondly, the principles of estoppal and res judicata cannot be applied before the trial as the said plea relates to admissibility of evidence designed to upset a finding of fact recorded by a competent court on a previous trial. Therefore, these principles cannot be made available to the petitioner for making out a case under Section 482 of the Code of Criminal Procedure. Thirdly, the learned Government Pleader cited KLR 1975 Supreme Court 160 and submits that to constitute an offence under Section 411 of the Indian Penal Code, the section does not prescribe as to by whom the act of theft should have been committed.

5. I have given my anxious consideration at the rival submissions at the bar. First of all this court must remember the limited jurisdiction envisaged under Section 482 of the Code of Criminal Procedure. The exceptional jurisdiction under Section 482 Cr.P.C. can be

invoked for the limited purposes preventing the abuse of the process of the court or otherwise to secure the ends of justice only. The inherent jurisdiction under Section 482 has to be exercised sparingly, carefully and with caution only when such exercise is justified.

6. Coming to the first point, it can be seen that the specific charge in the final report against the petitioners is that in furtherance of a common intension, the revision petitioners cheated witness Nos.14, 16 and 17 in the charge, by handing over a fake DD, which was forged on a stolen DD leaf. But in Crime No.32 of Hyderabad police the specific case is that on 19.01.2000 the accused went to the show room of M/s.Autofin Ltd., and purchased a Mitsubishi Lancer Car. Thereafter made a request to the complainant to raise the Delivery Challan in the name of the brother of A3 and gave a fake DD forged on a cheque leaf stolen from Vijaya Bank.

7. Having regard to the particulars of the transactions constituting the said offences under both crimes I am of the opinion that the transactions

constituting the offences under crime No 215/1999 of Manjeswaram Police Station and crime No.32/2000 of Hyderabad police are different and distinct. Therefore, acquittal of the accused in the crime No.32/2000 at Hyderabad cannot be taken into consideration to discharge the accused from the instant crime, invoking jurisdiction under Section 482 of the Cr.P.C.

8. Going by AIR 1975 Supreme Court 160 it could not be seen that the Apex Court held that the word stolen property merely denote the attribute or characteristics of the property. If the property is capable of being described as a stolen property that would be sufficient to comply with the requirements of section and it does not say by whom it should have been stolen. In view of the above decision, I find that the non prosecution of the accused who has committed the offence of theft is not fatal to the prosecution against the petitioners for the offence under Section 411 IPC.

9. As regards res judicata and estoppal, I am of the opinion that the principles of res judicata and

estoppal are the matters which deserve to be considered by the trial court at the time of the trial only, as the said plea relates to admissibility of evidence in trial. These questions cannot be considered, under the exceptional jurisdiction envisaged under Section 482 of the Cr.P.C to quash the proceedings in limine.

10. Going by the final report, it is seen that the crime was registered on 9.09.1999 and the final report was prepared on 30.07.2005 and the Magistrate took the final report on the files on 8.09.2005. But going by the final charge it is seen that though the crime was registered on 9.09.1999 and accused Nos 1 to 5 were arrested immediately after the registration of the crime. But the accused Nos 5 to 10 were implicated in the offence on the basis of further report filed by the investigating officer. In so far as, an offence under Section 411 of the Indian Penal Code is concerned, the period of limitation is 3 years only. But the period starts from the date on which the commission of the offence by the accused comes to the knowledge of the police. In this

case, the day on which the commission of offence by the accused has come to the knowledge of the police, is not discernible from the final report. It is not possible to reckon the period of limitation, unless this Court gets the starting point of the period of three years and I leave it open.

11. In the above view of the matter, I am of the opinion that before proceeding with the trial, the trial court has to examine the final report as to find out whether the cognizance of the offence against the revision petitioners for the offence under Section 411 of IPC is barred by limitation under Section 468 of the Cr.P.C. Certainly if the cognizance of the offence had been taken after 3 years from the date on which the police came to know the participation of the accused , the accused are not liable to be prosecuted.

In this regard, the trial court is further directed to consider the question of limitation after examining the documents produced along with report under Section 173 (2) of Cr.P.C. and also after affording an opportunity of being heard on the said point, to the petitioners. This Criminal MC is disposed of with the above direction. The presence of the petitioners will stand dispensed with till the consideration of the question of limitation.

Sd/-
K.HARILAL, JUDGE

lmp

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P.A. TO JUDGE