

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

Crl.MC.No. 2044 of 2015 ()

**CC. NO.52/2014 OF CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM.
CRIME NO. 817/2013 OF CENTRAL POLICE STATION, ERNAKULAM DISTRICT.**

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PETITIONERS/ACCUSED NOS. 1 TO 4:

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- 1. NISHA SAM, AGED 39 YEARS,
W/O.SAM K.PHILIP, NO.28/440, CHANGAMPUZHA NAGAR,
THRIKKAKKARA NORTH VILLAGE, ERNAKULAM DISTRICT.**
 - 2. SAM K.PHILIP, AGED 40 YEARS, S/O.K.K. PHILIP,
NO.28/440, CHANGAMPUZHA NAGAR,
THRIKKAKKARA NORTH VILLAGE, ERNAKULAM DISTRICT.**
 - 3. SIRAJ METHER, AGED 54 YEARS,
S/O.ABDUL REHMAN, NO.33/29, PADIVATTOM MURI,
PARAVOOR ROAD, EDAPPALLY NORTH VILLAGE,
ERNAKULAM DISTRICT.**
 - 4. SETHUNATH, AGED 46 YEARS,
S/O.MUKUNDAN MENON, FLAT NO.2, SEA VIEW POINT,
PALIPPARAMBU LANE, KALOOR KARA,
ELAMKULAM VILLAGE, ERNAKULAM DISTRICT.**

BY ADV. SRI.C.P.UDAYABHANU.

RESPONDENTS/COMPLAINANT:

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- 1. M/S. MATHER PROJECTS PRIVATE LTD.,
CORPORATE OFFICE, KODIYATTU CHAMBERS,
RAJAJI ROAD, KOCHI - 682 035,
REPRESENTED BY ITS CHIEF EXECUTIVE DIRECTOR AND
CHIEF EXECUTIVE OFFICER N.ASHOKAN,
AGED 55, S/O.NARAYANAKURUP.**
 - 2. THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

**R1 BY ADV. SRI.PRAVEEN K. JOY
R2 BY SR. PUBLIC PROSECUTOR SRI.C. RASHEED.**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 28-09-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- ANNEXURE I- CERTIFIED COPY OF THE FINAL REPORT DATED 21.02.2014 IN C.C.NO.52/2014 ON THE FILE OF THE CHIEF JUDICIAL MAGISTRATE, ERNAKULAM.**
- ANNEXURE II- COPY OF THE COMPLAINT, C.M.P NO.1914/2013 DATED 12.04.2013 ON THE FILE OF THE CHIEF JUDICIAL MAGISTRATE, ERNAKULAM.**
- ANNEXURE III- COPY OF THE PLAINT DATED 03.04.2013 IN O.S.NO.285/2013 ON THE FILE OF THE SUB COURT, ERNAKULAM.**
- ANNEXURE IV- TRUE COPY OF THE ORDER OF TEMPORARY INJUNCTION DATED 05.04.2013 IN I.A.NO.2132/2013 IN O.S. NO.285/2013 ON THE FILE OF THE SUB COURT, ERNAKULAM.**
- ANNEXURE V- TRUE COPY OF THE WRITTEN STATEMENT DATED 26.10.2013 IN O.S.NO.285/2013 ON THE FILE OF THE SUB COURT, ERNAKULAM.**

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

B.KEMAL PASHA, J.

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Crl.M.C. No. 2044 of 2015

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Dated this the 28th day of September, 2015

ORDER

Petitioners are the accused in C.C.No.52/2014 of the Chief Judicial Magistrate's Court, Ernakulam, which has arisen from Crime No.817/2013 of the Central Police Station, Ernakulam, for the offences punishable under Sections 120(B), 406, 409 and 477(A) read with Section 34 IPC. The petitioners have come up with the prayer to get Annexure-I final report and the proceedings in C.C.No.52/2014 of the Chief Judicial Magistrate's Court, Ernakulam, quashed.

2. Heard the learned counsel for the petitioners, the learned Senior Public Prosecutor and the learned counsel for the contesting party respondent.

3. The learned counsel for the petitioners has pointed out that this is a dispute among the members of the very

same family in respect of a company which has got a standing of around 150 years. It has also been requested that the matter can be referred to a Mediator, so that a mediation can be attempted.

4. There are serious allegations levelled against the petitioners. The correctness of such allegations cannot be gone through by this Court on merits at present as it is a matter which requires evidence. At the same time, the said aspects can be brought to the notice of the court below by the petitioners through an application under Section 239 Cr.P.C. at that stage.

5. Considering the seriousness of the allegations against the petitioners, I do not think that this Court can refer the matter for a mediation. Of course, in case of any settlement between the parties subsequently, they can once again approach this Court under Section 482 Cr.P.C. for the very same relief.

In the result, this Crl.M.C is closed by giving liberty to

the petitioners to file an application before the court below under Section 239 Cr.P.C. The court below shall not insist the personal presence of the petitioners till the stage of Section 239 Cr.P.C.

Sd/-
B.KEMAL PASHA, JUDGE

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