

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. 2045 of 2015 ()

**CC.NO. 90/2014 OF CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM
CRIME NO. 1254/2013 OF CENTRAL POLICE STATION, ERNAKULAM DISTRICT**

PETITIONERS/ACCUSED NOS. 1 TO 3 :

- 1. AFSAL ISMAIL, AGED 43,
S/O.VEERAN, RESIDING AT MANGALATHALIYIL, PETTA POST
FEROCK VILLAGE, KOZHIKODE THALUK, KOCHIKODE DISTRICT.**
- 2. NISHA SAM,
AGED 39, W/O. SAM K. PHILIP,
NO.28/440, CHANGAMPUZHA NAGAR
THRIKKAKKARA NORTH VILLAGE,
ERNAKULAM DISTRICT.**
- 3. K.A.SIRAJ METHER,
AGED 54, S/O.ABDUL REHMAN MATHER
NO.33/29, PADIVATTOM, PAVOOR ROAD
EDAPPALLY NORTH VILLAGE,
ERNAKULAM DISTRICT.**

BY ADV. SRI. C.P. UDAYABHANU

RESPONDENTS/COMPLAINANT :

- 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 MR.N.ASHOKAN
AGED 55, S/O.NARAYANAKURUP.**
- 2. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM
FOR SHO CENTRAL POLICE STATION
ERNAKULAM.**

**R1 BY ADV. SRI.PRAVEEN K. JOY
R2 BY PUBLIC PROSECUTOR SMT. P. MAYA**

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

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Crl.MC.No. 2045 of 2015 ()

APPENDIX

PETITIONERS' ANNEXURES :

- ANNEXURE I-** CERTIFIED COPY OF THE FINAL REPORT DATED 10.5.2014 IN C.C.NO.90/2014 ON THE FILE OF THE CHIEF JUDICIAL MAGISTRATE, ERNAKULAM.
- ANNEXURE II-** CERTIFIED COPY OF THE COMPLAINT, C.M.P NO.3185/2013 DATED 28.5.2013 ON THE FILE OF THE CHIEF JUDICIAL MAGISTRATE, ERNAKULAM.
- ANNEXURE III-** COPY OF THE PLAINT DATED 8.4.13 IN O.S.NO.310/2013 ON THE FILE OF THE SUB COURT, ERNAKULAM.
- ANNEXURE IV-** COPY OF THE ORDER OF TEMPORARY INJUNCTION DATED 10.4.2013 IN I.A.NO.2247/2013 IN OS.NO.310/2013 ON THE FILE OF THE SUB COURT, ERNAKULAM.
- ANNEXURE V-** COPY OF THE WRITTEN STATEMENT DATED NIL IN O.S.NO.310/2013 ON THE FILE OF THE SUB COURT, ERNAKULAM.

RESPONDENT(S)' ANNEXURES : NIL

//TRUE COPY//

P.A. TO JUDGE

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B.KEMAL PASHA, J.

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Crl.M.C. No. 2045 of 2015

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Dated this the 28th day of September, 2015

ORDER

Petitioners are the accused in C.C.No.90/2014 of the Chief Judicial Magistrate's Court, Ernakulam, which has arisen from Crime No.1254/2013 of the Central Police Station, Ernakulam, for the offences punishable under Sections 120(B), 420 and 409 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.90/2014 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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