

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.UBAID

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

Crl.MC.No.1175 of 2013

**CC NO.26/2008 OF THE CHIEF JUDICIAL MAGISTRATE COURT,KOZHIKODE.
CRIME NO.339/2007 OF KASABA POLICE STATION,KOZHIKODE.**

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PETITIONER/ACCUSED:

**SANJEEV KUMAR.K.P.AGED 41 YEARS,
S/O.LATE ASHOK KUMAR,KARIYATH MANAKKADA HOUSE,
CHIRAKKAL DESOM,KANNUR DISTRICT.**

BY ADV.SRI.P.M.HABEEB

RESPONDENTS:

- 1. MOHAMMED KUTTY,S/O.MAMMAD HAJEE,
AGED 48 YEARS,KUNDIL HOUSE,
PONNMUNDAM VILLAGE,TIRUR,
MALAPPURAM-676505.**
- 2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM-31.**

**R1 BY ADV.SRI.ANIL K.MOHAMMED
R2 BY PUBLIC PROSECUTOR SMT.P.MAYA**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 25-03-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

pk

CrI.M.C.NO.1175/2013

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEXURE A:THE CERTIFIED COPY OF THE COMPLAINANT FILED BEFORE
CHIEF JUDICIAL MAGISTRATE COURT,KOZHIODE
DATED 16.10.2007.**

ANNEXURE B:THE COPY OF THE FIR DATED 2.11.2007.

**ANNEXURE C:PHOTOCOPY OF FINAL REPORT IN CRIME NO.339/2007
DATED 4.1.2008.**

**ANNEXURE D:THE PHOTO COPY OF THE JUDGMENT OS 322/2007
DATED 18.1.2012 FILED BEFORE SUB COURT,KOZHIKODE.**

RESPONDENT'S ANNEXURES: **NIL**

//TRUE COPY//

P.S. TO JUDGE

pk

P. UBAID, J.

Crl.M.C.No.1175 of 2013

Dated this the 25th day of March, 2015

O R D E R

The petitioner herein is the sole accused in C.C.No.26/2008 of the Chief Judicial Magistrate Court, Kozhikode. The offences involved in the case are under Sections 417, 418 and 420 IPC. During trial, the petitioner brought this application under Section 482 Cr.P.C. to quash the prosecution, on the ground that there is absolutely no material to implicate him under Section 420 IPC, and that the transaction alleged by the complainant is essentially a civil transaction having only civil consequences. Now, there is report from the learned Chief Judicial Magistrate regarding the stage of the case. It is reported that the trial court has already examined some material witnesses, and now warrant of arrest is pending against the other witnesses. At this stage, it would be improper and inappropriate for this Court to intrude into the trial process and judge the merits of the case under Section 482 Cr.P.C. It is not known why the petitioner did not make application for discharge. Having answered the charge pleading not guilty, and having opted to face trial, he is now before this

Court under Section 482 Cr.P.C. to quash the prosecution when trial process is going on. When trial is going on, and the trial court has examined the material witnesses, the trial court will have to decide whether there is a case against the petitioner, or whether sufficient materials are there to implicate him under Section 420 IPC. If there is no material to implicate him under Section 420 or under the other Section, or if the transaction alleged by the complainant is essentially a civil transaction having only civil consequences, it will definitely be considered by the trial court in the decision making process. When the trial is midway, it would be inappropriate for this Court to intrude into the trial procedure, and quash the prosecution. This Court cannot adjudge the merits of the case under Section 482 Cr.P.c. The trial court will have to appreciate the evidence and come to a finding.

In the result, this petition is dismissed, without prejudice to the right of the petitioner to raise all his factual and legal objections before the trial court.

Sd/-

P. UBAID, JUDGE

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