

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

Crl.MC.No.2338 of 2015 ()

CMP 48/2015 of J.M.F.C-I, KASARAGOD
CRIME NO.41/2015 OF KASARAGOD POLICE STATION, KASARGOD

PETITIONER/ACCUSED:

SAHIRA BANU, AGED 44 YEARS,
W/O.AHAMMED SULAIMAN, MELPARAMB HOUSE
KALNADU VILLAGE AND POST, KASARAGOD TALUK
KASARAGOD DISTRICT.

BY ADVS.SRI.T.MADHU
SMT.C.R.SARADAMANI

RESPONDENT(S)/STATE:

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1. THE STATE OF KERALA
THROUGH THE STATION HOUSE OFFICER
KASARAGOD POLICE STATION
KASARAGOD DISTRICT REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.
 2. ABDULLA KUNHI C.H, AGED 41 YEARS
S/O.ABOOBACKER, RESIDING AT CHAPADI HOUSE
MULIYAR VILLAGE, EDNEER P.O., KASARAGOD TALUK
KASRAGOD DISTRICT - 671 541.

R2 BY ADV. SRI.SHAJI CHIRAYATH
R2 BY ADV. SMT.JIJI M. VARKEY
R2 BY ADV. SMT.SAVITHA GANAPATHIYATAN
R2 BY ADV. SRI.M.M.SHAJAHAN
R2 BY ADV. SRI.M.RETHEESHKUMAR
R1 BY PUBLIC PROSECUTOR SRI.R.GITESH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
12-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No.2338 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS:

ANNEXURE-A1: THE TRUE COPY OF THE PETITION IN C.M.P NO.48/2015 ON THE
FILE OF THE LEARNED JUDICIAL MAGISTRATE'S COURT - I, KASARAGOD

ANNEXURE-A2: THE TRUE CERTIFIED COPY OF THE FIR IN CRIME NO.41/2015
OF KASARAGOD POLICE STATION, KASARAGOD DISTRICT.

RESPONDENT(S)' EXHIBITS:

NIL

// TRUE COPY //

P.A TO JUDGE.

ALEXANDER THOMAS, J.

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Dated this the 12th day of August, 2015.

ORDER

The petitioner is the accused in the impugned Anx-A2 FIR in Crime No.41/2015 of Kasaragod Police Station, registered for offence punishable under Sec.417 of the IPC. The said crime has been registered on the basis of Anx-A1 complaint preferred by the 2nd respondent (defacto complainant) before the Judicial First Class Magistrate Court-I, Kasaragod. The jurisdictional Magistrate forwarded Anx-A1 complaint to the 1st respondent-Station House Officer, Kasaragod Police Station, for investigation under Sec.156(3) Cr.P.C and it is accordingly that Anx-A2 Crime was registered.

2. The gist of the allegations raised in the impugned criminal proceedings is that the husband of the petitioner-accused was the owner in possession of 28.5 cents of landed property in R.Sy.No.377 of Muttathody Village, Kasaragod Taluk and that the petitioner-accused with the strength of general power of attorney had sold the above property to the 2nd respondent-defacto complainant without disclosing the fact that there is a pathway through the property and sold the

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property for Rs.4.2 Lakhs by sale deed No.4447/2013 dated 23.8.2013 of Kasaragod SRO, and that since the petitioner concealed the existence of the pathway she had committed offence under Sec.417 of the IPC and that the 2nd respondent came to know all this on 6.1.2015 as informed by the neighbours and that thereupon he had set in motion Anx-A1 private criminal complaint on 7.1.2015, etc.

3. It is the contention of the petitioner that Anx-A1 complaint and Anx-A2 FIR does not disclose the ingredients of any cognizable offence and even if the entire allegations in Anx-A1 & A2 had taken in its face value, at the most, it will amount to civil wrong and no criminal offence is disclosed therein. Though the sale of the property had admittedly taken place on 23.8.2013, even going by the version in Anx-A1 complaint, which was filed as late as on 7.1.2015, that the sale was completed long ago and the possession was also handed over to the purchaser and since the 2nd respondent is in possession of the property from 23.8.2013, the allegations in the complaint that they came to know about the existence of the pathway in the property only on 7.1.2015 is absolutely exaggerating and is an afterthought only to harass the petitioner. It is further pointed out that the husband of the petitioner had purchased the property on 17.10.2006 vide sale deed

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No.4737/2006 of Kasaragod SRO and there is no mention regarding the existence of the pathway in the above document and that is the reason why there are no recitals about the pathway in the subsequent sale deed No.4447/2013 executed in favour of the 2nd respondent. That the 2nd respondent had purchased the property after visiting the property and after fully satisfying with the lie and nature of the property and that the petitioner did not conceal anything within her knowledge to the 2nd respondent while conveying the property and there is no dishonest intention on the part of the petitioner to cause any wrongful loss to the 2nd respondent and wrongful gain to the petitioner and there is no allegations to that effect in Anxs.A1 & A2, etc.

4. Heard Sri.T.Madhu, learned counsel for the petitioner, Sri.Shaji Chirayath, learned counsel for the 2nd respondent and the learned Public Prosecutor appearing for the 1st respondent-State of Kerala.

5. Even going by the averments in the impugned Anx-A1 private criminal complaint is that the sale deed was executed as early as on 23.8.2013 whereas the impugned Anx-A1 complaint was filed only as late as on 7.1.2015 after the execution and the completion of sale process, it is only to be presumed that the 2nd respondent was put in

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possession of the property on the execution of the sale deed and therefore the present complaint filed after the lapse of long 16 months thereafter, appears to be vexatious and frivolous. That apart, the allegations raised in the instant complaint is the one under Sec.417 of the IPC which is a cognizable offence and the punishment may extend to imprisonment for one year or with fine or with both. Under the mandatory provisions contained under Sec.468 of the Cr.P.C, for taking cognizance of an offence punishable with imprisonment for a term not exceeding one year, the period of limitation is one year. Therefore, the impugned Anx-A1 complaint filed after the lapse of 16 months appears to be without bona fides and amounts to abuse of the process of court.

6. In view of these aspects, it is ordered in the interest of justice that the impugned Anx-A1 and the impugned Anx-A2 Crime No.41/2015 of Kasaragod Police Station and all further proceedings pending against the petitioner herein stand quashed. The observations and findings in this order shall not in any way trammel or influence any civil proceedings that may be initiated and pending, in respect of this issue between the parties.

With these observations and directions, this Crl.M.C stands finally disposed of.

ALEXANDER THOMAS,
Judge.

bkn/-