

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 24TH DAY OF APRIL 2015/4TH VAISAKHA, 1937

Crl.MC.No. 2406 of 2015 ()

AGAINST THE JUDGMENT IN CC 1077/2006 of J.M.F.C.,KASARAGOD.

PETITIONER(S):

1. C.H.MOHAMMED,
S/O. C.H. ABDUL JALEEL,
NECHIPPADUPP,
P.O., PARAVANADKAM,
CHEMNAD, KASARAGOD DISTRICT.
2. P.K. MOHAMMED,
S/O. KUNHIPALI,
BADKAMBATH,
CHEMNAD, KASARAGOD DISTRICT.

BY ADVS.SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.
SRI.ROVIN RODRIGUES

RESPONDENT(S):

STATE OF KERALA,
REP. BY SUB INSPECTOR OF POLICE,
KASARAGOD POLICE STATION,
KASARAGOD DISTRICT (CRIME NO.455/1999)
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, PIN 682 031.

BY PUBLIC PROSECUTOR SMT. MADHU BEN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 24-04-2015
ALONG WITH CRL.M.C.NO. 2431/2015 & CRL.M.C.NO.2435/2015, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

ANNEXURE-I TRUE COPY OF THE FIR LODGED BY THE KASARAGOD POLICE STATION DATED 07.08.1999.

ANNEXURE-II TRUE COPY OF THE CHARGE SHEET/ FINAL REPORT ALONG WITH THE SUPPLIMENTARY CHARGES, DTD 24.02.2014 UNDER SECTION 173 CRIMINAL PROCEDURE CODE.

ANNEXURE-III TRUE COPY OF THE AGREEMENT, DTD 25.03.2015 SETTling ALL DISPUTES WHICH LED TO ANNEXURE-2 CHARGE IN CRIME NO.455/1999.

RESPONDENTS EXHIBITS : NIL

//True Copy//

P.A. to Judge

K. RAMAKRISHNAN, J.

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Crl. M.C. Nos.2406, 2431 and 2435 of 2015
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Dated this the 24th day of April, 2015

ORDER

These applications are filed by all the accused/ defacto complainant jointly to quash the proceedings in C.C.No.1077/2006, C.C.No.1076/2006 and C.C.No.1075/2006 on the file of the Judicial First Class Magistrate Court-I, Kasaragod, on the basis of settlement under Section 482 of the Code of Criminal Procedure.

2. It is alleged in the petitions that, the first petitioner is the managing partner of the firm Mount Crescent Construction, of which second petitioner was an employee. During the period from 1986-1996, certain malpractices were committed by the second petitioner and an amount of ₹84,227/- was misappropriated. So the first petitioner filed a complaint on the basis of which Crime No.455/1999 was registered and after investigation three separate charge-sheets were filed on the basis of which the cases have been taken on file as C.C.No.1077/2006,

1076/2006 and 1075/2006 on the file of the Judicial First Class Magistrate Court-I, Kasaragod. Now the matter has been settled between the parties and the entire amount due has been paid as per the agreement. Since the entire amount has been paid and it is only a monitory dispute arose between the employee and the employer, the first petitioner does not want to prosecute the second petitioner. Since some of the offences are non-compoundable in nature, they cannot file application before the court below. So the petitioners have filed the above petitions for quashing the proceedings.

3. Learned Public Prosecutor submitted that, except these cases, there is no other case against the second petitioner and it was a business relationship between the parties in which certain amounts have been misappropriated by the second petitioner. Since more than three offences have been committed, within a span of more than one year, three separate charge-sheet have been filed and these cases have been taken on file.

4. Heard the counsel for the petitioners as well.

5. It is an admitted fact that first petitioner is the partner of the firm Mount Crescent Construction and second petitioner was working as employee under them. He was working there from 1986-1996. Later it was revealed that, second petitioner had committed some misappropriation to the tune of ₹84,227/- during this period. When this was found out, on the basis of the complaint given by the first petitioner, Crime No.455/1999 was registered and after investigation three separate charge-sheets were filed against the second petitioner and on the basis of which three cases have been taken on file as C.C.No.1077/2006, 1076/2006 and 1075/2006 respectively on the file of the Judicial First Class Magistrate Court-I, Kasaragod. It is seen from Annexure-III agreement that, the matter has been settled between the parties and the entire amount due has been paid as well and this settlement was arrived at due to the intervention of well-wishers of both the parties. In view of the settlement, first petitioner

had agreed to withdraw the prosecution and it is on the basis of which these petitions have been filed. Though certain offences are non- compoundable in nature, there is no evidence to show that any forgery has been committed or any manipulation of accounts has been committed. But certain amounts entrusted while he was working under the first petitioner were seen misappropriated by the second petitioner, which he later admitted and paid in the mediation held between the parties due to the intervention of well-wishers of both parties. Since the matter has been settled between the parties and both the defacto-complainant/ accused have jointly filed this petition for quashing the proceedings, no purpose will be served by proceeding the case as well, as they are not going to support the case of the prosecution.

6. Further in the decision reported in **Gian Singh v. State of Panjab [2012(4) KLT 108 (SC)]**, the Hon'ble Supreme Court has held that, in cases where personal disputes and matrimonial disputes, or monitory

dispute of criminal nature resulted in registration of crime and the matter has been settled between the parties, even though certain non-compoundable offence has been incorporated in order to honour the settlement, court must invoke the power under Section 482 of the Code of Criminal Procedure to quash the proceedings.

7. In view of the dictum laid down in the above decision, and also considering the fact that it is a dispute between the employer and employee and relating to monitory dispute between them, which has been settled due to the intervention of mediators and the entire amount said to have been misappropriated has been paid and other offences namely, offence under Section 465, 468 and 477A have not been made even on the basis of evidence, this court feels that, there is no purpose in proceeding the case, as the possibility of conviction is remote and proceeding the cases will only amount to wastage of judicial time. So this court feels that, it is a fit case where the power under Section 482 of the Code of Criminal Procedure has to be

invoked to quash the proceedings, so as to honour the settlement entered into between the parties and also to promote the relationship that has been restored between the parties on account of the settlement. The pendency of this case should not be a hurdle for the same.

So the applications are allowed and further proceedings in C.C.No.1077/2006, C.C.No.1076/2006 and C.C.No.1075/2006 (arising out of Crime No.455/1999 of Judicial First Class Magistrate Court-I, Kasaragod) pending before the Judicial First Class Magistrate Court-I, Kasaragod, as against the second petitioner are quashed.

Office is directed to communicate this order to the concerned court, immediately.

Sd/-

K. RAMAKRISHNAN, JUDGE

// True Copy//

P.A. to Judge

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