

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

Crl.Rev.Pet.No. 140 of 2003 (Y)

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AGAINST THE ORDER IN CC 74/1998 of JUDL.M.F.C.- I, ERNAKULAM
DATED 20-05-2002
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REVISION PETITIONER(S)/COMPLAINANT :

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M.M.T.C. LIMITED, CORE-1, SCOPE COMPLEX,
7 LODI ROAD, NEW DELHI 110 003, REPRESENTED BY
THE SENIOR MANAGER, M.M.T.C. LIMITED, SUB REGIONAL
OFFICE, JOS TRUST BUILDING, CHITTOOR ROAD
ERNAKULAM, KOCHI-682 035.**

**BY ADVS.SRI.D.PEETHAMBARAN
SRI.R.ANIL**

RESPONDENT(S)/ACCUSED :

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- 1. M/S.MACHINGAL ENTERPRISES,
NO.14-44/1, 14-51/1, SRINIVAS NAGAR
MUKKA, SURATKAL, KARNATAKA 574 177
REPRESENTED BY ITS MANAGING PARTNER FOUZIA KAIZE**
 - 2. FOUZIA KAIZE, W/O. M.M.MOHAMED KAIZE
MANAGING PARTNER, M/S.MACHINGAL ENTERPRISES
NO.14-44/1, 14-51/1, SRINIVAS NAGAR
MUKKA, SURATKAL, KARNATAKA 574 177
RESIDING AT NO.9, AI BADRIYA COTTAGE
SURATKAL MANGALORE, D.K.DISTRICT, KARNATAKA**
 - 3. KAMARBAN SALEEM,
W/O. M.M.MOHAMED SALEEM, PARTNER
M/S.MACHINGAL ENTERPRISES, NO.14-44/1, 14-51/1
SRINIVAS NAGAR, MUKKA, SURATKAL
KARNATAKA 574 177
RESIDING AT PLOT NO. G.C.D.A. COLONY, KOOVAPADAM
COCHIN.**

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4. NAZAMATHNISA LAIZ, W/O. M.M.MOHAMED LAIZ
PARTNER, M/S.MACHINGAL ENTERPRISES, NO.14-44/1
15-51/1 SRINIVAS NAGAR, MUKKA, SURATKAL
KARNATAKA 574 177, RESIDING AT NO.33, G.C.D.A.
COLONY, VADUTHALA, COCHIN.
5. NADERA BEGAM, D/O.P.A.RAHIMAN,
PARTNER, M/S.MACHINGAL ENTERPRISES, NO.14-44/1
14-51/1 SRINIVAS NAGAR, MUKKA, SURATKAL
KARNATAKA 574 177, RESIDING AT POST, BOX NO.321
NO.104 MOUNT ROAD, CHENNAI 600 002.
6. M.M.MOHAMMED KAIZE, MANAGER,
M/S.MACHINGAL ENTERPRISES, NO.14-44/1, 14-51/1
SRINIVAS NAGAR, MUKKA, SURATKAL
KARNATAKA 574 177, RESIDING AT NO.9 A1
BADRIYA COTTAGE, SURATKAL, MANGALORE
D.K.DISTRICT, KARNATAKA 574 177.
7. STATE OF KERALA, REPRESENTD BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 & 6 BY ADV. SRI.JOY JOSEPH (UDAYAMPEROOR)
R7 BY SRI.DHANESH MATHEW MANJOORAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
15-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

VS

P.D.RAJAN, J.

Crl.R.P.No.140 of 2003

Dated this the 15th day of October, 2015

ORDER

Revision petitioner is the complainant in C.C.No.74/98 of the Judicial First Class Magistrate-I, Ernakulam, which was filed under Sections 403, 406, 409 and 420 of the Indian Penal Code against 6 accused persons.

2. Complainant is a Government of India enterprise, conducting business including exporting of frozen marine products. The first accused is a partnership firm and accused Nos.2 to 6 are the partners of the said firm. In December 1993, the first accused was approached the complainant for financial assistance for exporting marine food products. Accordingly, they executed an agreement on 16.12.1993, by which it was agreed that the complainant will pay an amount upto the limit of Rs.10 lakhs in stages by way of advance for purchase of raw materials against a collateral security and packing

credit upto a limit of Rs.30 lakhs against hypothecation of stocks and in that accused has to pay interest to the loan amount. As per the hypothecation agreement, complainant has paid Rs.65,41,414/- to the accused towards the purchase of marine products. But the accused failed to comply with the directions in the agreement and misappropriated a sum of Rs.19,31,316.70/- against the hypothecation agreement. On 11.07.1995, the complainant came to know that the accused shifted the entire hypothecated marine products without the knowledge and consent of the complainant. In the circumstances, the accused have committed the offence. Hence the complaint.

3. To prove the offence, complainant examined PWs 1 to 6 and marked Exts.P1 to 22 as documentary evidence. Exts.D1 and D2 were marked by the accused. The trial court after analysis of the oral and documentary evidence, passed an order, discharging all the accused and dismissed the appeal, under Section 245(1) of the Code of Criminal Procedure. Being aggrieved by that, the

complainant approached this Court with this revision petition.

4. In a warrant registered based on a police report, the accused appears or is brought before a Magistrate, he shall proceed to hear the prosecution and take all evidence in support of the prosecution. The power of the Magistrate under Section 244 is ... and he has every right to exercise his discretion to entertain witness or any supplementary eye witness. While the examination of witnesses and perusing the case of the complainant, he shall exercise his discretion judicially for the advancement of justice for sorting out prima facie case is made out by the complaint. This shows that it is the primary duty of the defacto complainant to produce all the evidence in support of his allegation. Here the allegation of the complainant is that the respondents have committed the offence punishable under Sections 403, 406, 409 and 420 of the Indian Penal Code. In order to attract the criminal misappropriation of property, complainant has to prove that the accused dishonestly

misappropriated or converted any movable property for their own use. The estimation in this case that a person who takes property not in the possession of any other person and takes property for the purpose of protecting it and the owner does not misappropriate dishonestly. No evidence has been adduced by the defacto complainant to prove the alleged misappropriation, in order to attract the offence under Section 406 of Indian Penal Code. For criminal breach of trust, nothing was entrusted with property or domine over the property dishonestly misappropriated or converted to their own use that property violation of any direction of law prescribing the mode in which such a trust is discharged. Here the allegation is that there is no hypothecation agreement subsequently the goods shifted to Cochin and Manglore according to their business. It is true that they admitted that they extended financial assistance to the first respondent firm that will not amounts to criminal breach of trust for attracting the offence of cheating also not proved in this case. The trial court considered this point

of discharge.

5. According to Rule 45(1) taking upon the evidence by the Magistrate court mentioned under Section 244 of the Code, if the Magistrate thinks that no case against the accused has been made out, if untoward the warrant of conviction, the Magistrate shall discharge him. Even though the revision petitioner examined PWs 1 to 6, that evidence does not support the allegation to attract the alleged offence. In the circumstance, after perusing the documents Exts.P1 to 22 the charge against the respondents are groundless and discharged the accused.

I find there is no illegality in the order passed by the court below and therefore there is no merit in this revision petition and it is dismissed accordingly.

**P.D.RAJAN
JUDGE**

VS