

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

Crl.MC.No. 2574 of 2015

CRIME NO. 154/2015 OF KUMARAKOM POLICE STATION , KOTTAYAM

PETITIONER(S):

1. S.SIVA
S/O.K.P.SHANMUGAM, 293/6 MH ROAD, FAIRLANDS
SALAM 16, DIRECTOR
HOSANNA TOURS AND TRAVELS PVT. LTD.
207/3 UNITED ARCADE, KAVERY AVENUE, STATE BANK COLONY
NEAR AVR CIRCLE, SALEM 636004, TAMIL NADU

2. NEETHU
W/O.S.SIVA, 293/6 MH ROAD, FAIRLANDS,
SALAM 16, DIRECTOR
HOSANNA TOURS AND TRAVELS PVT. LTD.
207/3 UNITED ARCADE, KAVERY AVENUE, STATE BANK COLONY
NEAR AVR CIRCLE, SALEM 636004, TAMIL NADU

BY ADV. SRI.JACOB E SIMON

RESPONDENT(S):

1. THE STATE OF KERALA
THROUGH THE SUB INSPECTOR OF POLICE
KUMARAKOM POLICE STATION, KOTTAYAM DISTRICT
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

2. LAKESONG RESORT,
AMMANKARI ROAD, KUMARAKOM, KOTTAYAM DISTRICT
PIN 686563, REPRESENTED BY FINANCE MANAGER

BY PUBLIC PROSECUTOR SMT. MADHUBEN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
30-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A:A CERTIFIED COPY OF THE FIR ALONG WITH FIS IN CRIME
NO.154/2015 OF KUMARAKOM POLICE STATION

ANNEXURE B:A TRUE COPY OF THE DEMAND NOTICE FOR AN AMOUNT OF
RS.200000/-

ANNEXURE C:A TRUE COPY OF THE DEMAND NOTICE FOR AN AMOUNT OF
RS.4637920/-

ANNEXURE D:A TRUE COPY OF THE ORDER PASSED BY THE HONOURABLE
COURT IN KOTTAYAM IN BA.NO.1539/2015

ANNEXURE E:A TRUE COPY OF THE RECEIPT ISSUED BY THE SECOND
RESPONDENT ALONG WITH THE COPIES OF DEMAND DRAFT

//True Copy//

P.S.To Judge

RAJA VIJAYARAGHAVAN.V. J

Crl.M.C. 2574 of 2015

Dated 30th June, 2015

ORDER

- 1.This petition is filed under Section 482 of the Code of Criminal Procedure.
- 2.The petitioners, husband and wife respectively.They are arrayed as accused Nos.1 and 2 in Crime No.154 of 2015 of Kumarakom police station, Kottayam. They are alleged to have committed offence punishable under Sections 406 and 420 of the Indian Penal Code. The *de facto* complainant is the finance Manager of Kumarakam Lake song resort.
- 3.The gist of the allegation against the petitioners is that, they being tour operators and travel agents, during the period from 22.1.2015 till 25.1.2015, rooms in the resort run by the *de facto* complainant were

taken on rent on the strength of an agreement. The petitioners, it is alleged in the FIR, did not settle the dues to the *de facto* complainant which came to the tune of Rs.6,63,790/- and the failure would attract the offense under S 420 and S 406 of the I.P.C.

4. It is on these allegations that a statement was furnished by the 2nd respondent herein before the Sub Inspector of police, Kumarakom police station based on which the aforesaid crime was registered on 18.2.2015. The prayer in this Criminal Miscellaneous Case is quash all further proceedings pursuant to the FIR on the ground that no offence is made out.

5. According to the learned counsel for the petitioners pursuant to the registration of crime, Annexure-B and Annexure-C notices were issued by the *de facto* complainant under Section 138 of the Negotiable Instruments Act as against the petitioners. After receipt

of notice, the petitioners had settled the amounts due to the 2nd respondent and evidencing the said fact, Annexure-E receipt signed by the 2nd respondent has been produced before this Court. The petitioners have also produced the cheques and Demand Drafts issued by the petitioners to the 2nd respondent evidencing the payment of money. It is contended that no offence under Section 420 or 406 is attracted in this particular case and even the *de facto* complainant has no case that there was intention to deceive at the time when the agreement was entered into on the part of the petitioners .

6. Notice was issued to the 2nd respondent and though it was duly served there is no representation.

7. There is nothing in the records to show that the petitioners had dishonest or fraudulent intention. On the other hand, it appears that the crime was

registered when the travel agency run by the petitioners did not settle the hotel bills issued by the 2nd respondent. It is not the case of the respondent No. 2 that a representation was made by the petitioners to him at or before the time the agreement was entered into and that at the time the representation was made, the petitioners knew the same to be false. The fact that the petitioners subsequently did not abide by their commitment would not be sufficient to fasten criminal liability on the respondents for the offence of cheating.

8. After having perused the allegations in Annexure-A FIR, I do not think that the offence under Sections 420 and 406 is made out. At the most, dishonor of the cheque may have attracted an offence under Section 138 of the Negotiable Instruments Act. Further, in the light of the settlement made by the petitioners as evidenced by Annexure-E, I do not think that it is in the interest of justice to permit the prosecution of the petitioners to

continue any further.

9.In the result, this Crl.M.C is allowed. All further proceedings in Crime No.154 of 2015 of Kumarakom police station, Kottayam, is hereby quashed.

Sd/-

RAJA VIJAYARAGHAVAN.V.
Judge

MrCs

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