

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 25TH DAY OF SEPTEMBER 2015/3RD ASWINA, 1937

Crl.MC.No. 1478 of 2014 ()

**CC.NO. 28/2011 OF ADDL.CHIEF JUDICIAL MAGISTRATE COURT (ECONOMIC
OFFENCE), ERNAKULAM**

PETITIONER(S):

1. **LEELA SREEDHARAN, AGED 61 YEARS,
W/O.C.N.SREEDHARAN, NAYAKATH HOUSE NO.11/1937,
ASHOKA ROAD, KALOOR, KOCHI -17,
PRESENTLY HAVING ADDRESS AT KANJANPALLY HOUSE,
HILL PALACE ROAD, NEAR TRIPUNITHURA RAIL OVER BRIDGE,
TRIPUNITHURA, KOCHI- 682 301.**
2. **SHIBU SREEDHARAN, AGED 42 YEARS,
S/O.C.N.SREEDHARAN, NAYAKATH, HOUSE NO.11/1937,
ASHOKA ROAD, KALOOR, KOCHI -17
PRESENTLY HAVING ADDRESS AT KANJANPALLY HOUSE,
HILL PALACE ROAD, NEAR TRIPUNITHURA RAIL OVER BRIDGE,
TRIPUNITHURA, KOCHI -682 301.**
3. **BIBU SREEDHARAN, AGED 38 YEARS,
S/O.C.N.SREEDHARAN, NAYAKATH, HOUSE NO.11/1937,
ASHOKA ROAD, KALOOR, KOCHI- 17,
PRESENTLY HAVING ADDRESS AT DUNES VILLAGE,
BUILDING NO.4, FLAT NO.205, DUBAI INVESTMENT PARK-2,
DUBAI.**
4. **JIJU M.G., AGED 38 YEARS,
S/O.GANGADHARAN, THARAYIL HOUSE,
ALUVA- 683 101.**

**BY ADVS.SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SRI.V.S.SHIRAZ BAVA**

RESPONDENT(S):

1. **STATE OF KERALA,
REP. BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM- 682 031**

CRL.MC.NO.1478/2014

2. STATE BANK OF TRAVANCORE,
A.R.M.BRANCH, ZONAL OFFICE, PANAMPILLY NAGAR,
KOCHI -683 036.

R1 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE
R2 BY ADV. SRI.SATHISH NINAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 25-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEX A1.** CERTIFIED COPY OF THE COMPLAINT FILED BY THE 2ND RESPONDENT NUMBERED AS CC NO.28/11 ON THE FILE OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE (ECONOMIC OFFENCE) ERNAKULAM.
- ANNEX A2.** COPY OF THE ORDER IN IA NO.1728/12 IN OA NO.44/10 PERMITTING THE PETITIONER TO RELEASE THE ORIGINAL TITLE DEEDS MORTGAGED WITH THE BANK.
- ANNEX A3.** COPY OF THE NO OBJECTION CERTIFICATE DATED 22.06.13 ISSUED BY THE 2ND RESPONDENT.
- ANNEX A4.** COPY OF THE COMMUNICATION DATED 25.06.13 ISSUED BY THE 2ND RESPONDENT.
- ANNEX A5.** COPY OF THE ORDER DATED 03.07.13 IN OA NO.44/10.

RESPONDENT(S)' ANNEXURES: NIL

/TRUE COPY/

P.S.TO JUDGE

B.KEMAL PASHA, J.

.....
CRL. M.C. No.1478 of 2014
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Dated this the 25th day of September, 2015

ORDER

Petitioners are the accused in C.C.No.28/2011 of the Additional Chief Judicial Magistrate's Court(Economic Offences), Ernakulam for the offences punishable under Section 420 IPC and Section 13(13) read with Section 29 of the Securitisation and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002(for short SARFAESI Act).

2. The allegation against the petitioners is that after the initiation of the SARFAESI proceedings against the hypothecated machinery, which are secured assets under the SARFAESI Act, the petitioners had removed the hypothecated machinery with a view to defrauding and

cheating the Bank. It has been pointed out that the entire claims of the Bank were settled, the entire amount has been paid, and the liability has been wiped out. The matter involved can, at the most, be treated as a breach of contract committed by the petitioners. The ingredients of the offence of cheating are lacking in the case and the matter is, more or less of, civil in nature.

3. The 2nd respondent Bank has filed a statement before this Court stating that pending the SARFAESI proceedings, the petitioners have paid the entire amount due to the Bank and the loan account has been closed and the matter is settled between the Bank and the petitioners. When the matter has been amicably settled, continued proceedings in the case will be a sheer waste of time and therefore, all further proceedings in C.C.No.28/2011 of the Additional Chief Judicial Magistrate's Court(Economic Offences) Ernakulam through Annexure A1 can be quashed.

In the result, this CrI.M.C. is allowed and all further

proceedings in C.C.No.28/2011 of the Additional Chief Judicial Magistrate's Court(Economic Offences) Ernakulam, through Annexure A1 are hereby quashed.

Sd/- B.KEMAL PASHA, JUDGE

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[True copy]

P.S. to Judge