

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

Crl.MC.No. 1906 of 2013 ()

**IN CC 1493/2012 of J.M.F.C.,KOLENCHERRY
CRIME NO. 48/2012 OF CHOTTANIKKARA POLICE STATION , ERNAKULAM**

PETITIONER(S)/PETITIONER/1ST ACCUSED :

**M.K. CHANDRAN AGED 52 YEARS
MANCHAKKATTIL HOUSE, THIRUVANKULAM P.O.
ERNAKULAM DISTRICT, PIN-682 305.**

BY ADV. SMT.CHINCY GOPAKUMAR

RESPONDENT(S)/RESPONDENTS :

- 1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682 031.**
 - 2. SMT.USHA SUDHAKARAN , AGED 57 YEARS
W/O. SUDHAKARAN, MANJAKATTIL HOUSE, THIRUVANKULAM P.O.
ERNAKULAM DISTRICT-682 305.**
- R2 BY ADV. SRI.K.RAMAKUMAR (SR.)
R2 BY ADV. SRI.S.M.PRASANTH
R2 BY ADV. SMT.SMITHA GEORGE
R2 BY ADV. SMT.ASHA BABU
R2 BY ADV. SMT.G.ASHWINI
R2 BY ADV. SMT.AMMU CHARLES
R1 BY PUBLIC PROSECUTOR SMT. S. HYMA**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 31-03-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 1906 of 2013 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE I : CERTIFIED COPY OF THE FIR IN CRIME NO.48/12 OF CHOTTANIKKARA POLICE.

ANNEXURE II: COPY OF THE FIR IN CRIME NO.46/12 DTD.28.1.2012.

ANNEXURE III: COPY OF THE ORDER DTD.4.2.2012 IN CRL.MC NO.214/2012 OF SESSIONS COURT, ERNAKULAM.

ANNEXURE IV: COPY OF THE ORDER DTD.1.8.2012 IN CRL.MC NO.1555/12 OF SESSIONS COURT, ERNAKULAM.

ANNEXURE V: COPY OF NOTICE DTD.4.2.2011 ISSUED BY THE DISTRICT CO-OPERATIVE BANK.

ANNEXURE VI: COPY OF LETTER DTD.11.6.2012 ISSUED BY THE DISTRICT CO-OPERATIVE BANK.

ANNEXURE VII: COPY OF LETTER DTD.5.3.2013 AND DETATILS OF QUARTERLY RETURNS.

ANNEXURE VIII: CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.48/12.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PATO JUDGE
sab

P.UBAID, J.

Crl. M.C No. 1906 of 2013

Dated this the 31st day of March, 2015.

O R D E R

The petitioner herein is the first accused in C.C No.1493 of 2012 of the Judicial First class Magistrate Court, Kolencherry. Crime in this case was registered on the complaint of the second respondent herein. She is none other than the petitioner's sister in law. Complaint from the second respondent came in connection with the management of a transport business taken over by the petitioner herein on the death of the husband of the second respondent. After thorough investigation the police submitted final report under Sections 406 and 420 IPC. The petitioner now seeks orders quashing the prosecution as against him mainly on the ground that the transaction alleged in the complaint is one of civil nature having only civil consequences.

2. I heard both sides and perused the prosecution materials including the FIR and the final report. On a perusal of the complaint and the final report I find that the de facto complainant

has a grievance to be heard by the trial court. The main ground on which the petitioner seeks orders under Section 482 Cr.P.C is that the transaction alleged in the complaint is only a civil transaction having civil consequences. However, I find that the grievance projected by the second respondent in her complaint will have to be looked into by the trial court, and the trial court will have to take a proper decision on adjudication of the dispute. Whether the allegations in fact constitute the alleged offence, or whether the essentials and ingredients of the offences are there, will have to be gone into by the trial court. In the particular facts and circumstances of the case where the actual grievance of the complainant is evident prima facie, it will be inappropriate for this court to adjudicate the dispute on facts under Section 482 Cr.P.C. However, the petitioner can make application for discharge before the trial court. Without prejudice to his right to plea for discharge, this Crl.M.C can be closed. I find no compelling reason or material to quash the prosecution under Section 482 Cr.P.C. The learned counsel for the petitioner now makes a request for exemption from personal appearance. The

petitioner will have to make necessary application for the said purpose before the trial court. If he has genuine reasons, his request will definitely be considered by the learned Magistrate.

In the result, this Crl.M.C is dismissed in limine, without being admitted to files, however without prejudice to the right of the petitioner to apply for discharge before the trial court.

Sd/-

P.UBAID,
JUDGE

sab