

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE B.KEMAL PASHA**

**THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937**

**Crl.MC.No. 3605 of 2015 ()**

**CC 549/2014 of JUDICIAL FIRST CLASS MAGISTRATE COURT - I, VAIKOM**

**PETITIONERS/ACCUSED 1 TO 3 :**

- 1. A.S.PATEL  
NADASHA, 52-HILL ROAD, BAN(B0 WEST  
MUMBAI-400 050, MAHARASHTRA.**
- 2. RAJESH PILLAI  
NADASHA, 52-HILL ROAD, BAN(B) WEST  
MUMBAI-400 050, MAHARASHTRA.**
- 3. S. PRADEEP KUMAR  
49/1337 PONJIKARA HOUSE, ELAMAKARA P.O., KOCHI-26  
EDAPALLY, NORTH VILLAGE, KANAYANNUR TALUK,  
ERNAKULAM.**

**BY ADV. SRI.J.ABHILASH**

**RESPONDENTS/STATE & DEFACTO COMPLAINANT :**

- 1. STATE OF KERALA  
REPRESENTED BY ITS PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. P.K. KURIAKOSE, S/O. KURIAKOSE, PAZHEMADOM VEEDU,  
PADINJAREKARA P.O., NADUVILEKARA, VALLAKOM VILLAGE,  
VAIKOM - 686671.**

**R1 BY PUBLIC PROSECUTOR  
R2 BY SRI.B.RAMAN PILLAI SENIOR ADVOCATE  
R2 BY ADVS. SRI.M.SUNILKUMAR  
SRI.SUJESH MENON V.B.  
SRI.T.ANIL KUMAR  
SRI.MANU TOM  
SRI.THOMAS ABRAHAM (NILACKAPPILLIL)  
SRIA.RAJESH  
SRI.M.VIVEK**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 17-09-2015, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:**

**bp**

**APPENDIX**

**PETITIONER(S)' EXHIBITS**

- ANNX.A1:** TRUE COPY OF THE M.O.U EXECUTED BETWEEN COMPANY AND SECOND RESPONDENT DATED 12.12.2007.
- ANNX.A2:** TRUE COPY OF THE AGREEMENT BETWEEN COMPANY AND SECOND RESPONDENT DATED 29.05.2009.
- ANNX.A3:** TRUE COPY OF THE COMPLAINT FILED BY THE COMPANY UNDER 138 OF N.I.ACT BEFORE JFCM ERNAKULAM DATED 6.9.11.
- ANNX.A4:** TRUE COPY OF THE COMPLAINT IN CMP.5012/11 LATER C.C.868/11 BEFORE JFCM VAIKOM DATED 1.10.11.
- ANNX.A5:** TRUE COPY OF THE OBJECTION FILED BY THE COMPANY TO REFER REPORT IN C.C.868/11 DATED 10.2.2012.
- ANNX.A6:** TRUE COPY OF THE PLAINT IN O.S.452/12 DATED 2.8.2012.
- ANNX.A7:** TRUE COPY OF THE REFERREPORT IN CMP.1408/12 IN C.C.364/12 FILED BY THE RESPONDENT DATED 24.12.13.
- ANNX.A8:** TRUE COPY OF THE COMPLAINT IN C.C.NO.549/14 FILED BY THE SECOND RESPONDENT DATED 3.2.2014.
- ANNX.A9:** TRUE COPY OF THE STATEMENT GIVEN BY SECOND RESPONDENT AND HIS WITNESS BEFRE JFCM, VAIKOM IN CC.549/14.
- ANNX.A10:** TRUE COPY OF THE ORDER SHEET IN C.C.549/14.
- ANNX.A11:** TRUE COPY OF THE JUDGMENT IN CRL.R.P.1927/2014.
- ANNX.A12:** TRUE COPY OF THE PLAINT IN O.S.6/2014 FILED BY THE SECOND RESPONDENT DATED 7.1.2014.
- ANNX.A13:** TRUE COPY OF THE OFFER LETTER ISSUED TO THE THIRD PETITIONER BY THE COMPANY DATED 12.9.2009

**RESPONDENT(S)' EXHIBITS : NIL.**

**//TREU COPY//**

**P.S. TO JUDGE**

**bp**

**B.KEMAL PASHA, J.**

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CRL. M.C. No. 3605 of 2015  
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Dated this the 17<sup>th</sup> day of September, 2015

**ORDER**

Petitioners are the accused in C.C.No.549/2014 of the Judicial First Class Magistrate's Court-I, Vaikom for the offences punishable under Sections 420, 120B, 468 and 471 IPC. Initially a crime was registered in the matter. After investigation the police had chosen to refer the matter. Aggrieved by it, a private complaint was filed by way of protest complaint. The court below has taken cognizance of it, after examining the complainant and some of the witnesses. The same is under challenge.

2. It seems that once the matter was challenged before this Court through CrI.RP.1927/2014. The same was

dismissed by this Court vide order dated 28.04.2015, leaving open the remedy to the petitioners to have recourse to the provisions under Sections 244 and 245 Cr.P.C.

3. The request at present is to get the private complaint as such quashed. On considering the facts and on hearing either side, this Court is of the view that it is too premature to take a view that the complaint as such is not legally sustainable. This Court is not making any opinion with regard to the merits or otherwise of the complaint. Being a warrant trial on a private complaint, the petitioners have enough and more opportunity in the matter. As rightly pointed out by this Court earlier in the CrI.R.P., the petitioners can have recourse to the stages under Sections 244 and 245 Cr.P.C. in the matter. The petitioners have got ample opportunity to challenge the evidence being tendered by the complainant and his witnesses at the preliminary stage also. Leaving open to have recourse to such remedies, this CrI.M.C is closed.

CRL.M.C.No. 3605 of 2015

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**B. KEMAL PASHA, JUDGE.**

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