

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

Crl.MC.No. 3091 of 2013 ()

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AGAINST CC 711/2012 of C.J.M., KALEPETTA

PETITIONER(S)/ACCUSED NO.4:

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GEETHA K.P AGED 42 YEARS  
W/O.P V MUKUNDAN, PERICHERIYALAPPIL HOUSE, MUTTIL P O  
WRIYAT, WAYANAD-673122

BY ADVS.SRI.M.R.ANISON  
SMT.P.A.RINUSA

RESPONDENT(S)/STATE & COMPLAINANT:

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1. STATE OF KERALA  
REP BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA  
ERNAKULAM-682031
  2. OFFICIAL LIQUIDATOR  
HIGH COURT OF KERALA, ERNAKULAM-682031
  3. SMT.SULOCHANA  
W/O.DINESH, KOTTATTEPARAMBIL HOUSE, MUTTIL AMSOM  
KALPETTA, WAYANAD-673121

R1 BY PUBLIC PROSECUTOR SMT.P.MAYA  
R2 BY SRI.K.MONI

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
24-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

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ANNEX.A1:-A TRUE COPY OF THE CERTIFIED COPY OF THE COMPLAINT DTD 6/6/2011 FILED BY THE 2ND RESPONDENT

ANNEX.A2:-A TRUE COPY OF THE FIR OF THE KALPETTA POLICE STATION, APPOINTMENT ORDER DTD 15/1/2011 ISSUED TO THE PETITIONER FROM THE OFFICE THE CHAIRMAN AND THE MANAGING DIRECTOR, KSRTC

ANNEX.A3:-A TRUE COPY OF THE FINAL REPORT DTD 405/2011 , APPOINTMENT ORDER DTD 11/7/2012 ISSUED TO THE PETITIONER BY THE DISTRICT MEDICAL OFFICER, WAYANAD

ANNEX.A4:-TRUE COPY OF THE JUDGMENT DTD 23/9/2011 IN CP NO 8/2011

ANNEX A5:-TRUE COPY OF THE INDENTITY CARD ISSUED BY THE DISTRICT EXECUTIVE OFFICER DTD 1/1/2008

ANNEX.A6:-TRUE COPY OF THE RELIEVING ORDER DTD 21/1/2011 ISSUED BY THE MANAGIGN DIRECTOR OF THE COMPANY

ANNEX.A7:-TRUE COPY OF THE APPOINTMENT ORDER DTD 15/1/2011 ISSUED BY THE OFFICE OF THE CHAIRMAN AND MANAGIGN DIRECTOR, KSRTC

ANNEX.A8:-TRUE COPY OF THE APPOINTMENT ORDER DTD 21/7/2012 ISSUED BY THE DISTRICT MEDICAL OFFICER(HEALTH)WAYANAD

RESPONDENT(S)' EXHIBITS

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/TRUE COPY/

P.S TO JUDGE

**P.UBAID, J.**  
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**Crl.M.C No.3091 of 2013**  
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**Dated this the 24<sup>th</sup> February, 2015**

**ORDER**

The petitioner herein is the 4<sup>th</sup> accused in C.C No.711 of 2012 of the Chief Judicial Magistrate's Court. Kalpetta, involving the offence punishable under Section 420 of Indian Penal Code. She was a clerical staff of one Chitty Company by-name M/s.Sreekovil Chits Pvt. Ltd, Kalpetta. Now she is a Clerk-Typist in the Health Department of Kerala. She resigned from the Chitty Company on 18.12.2011. The accused Nos.1 to 3 are respectively the Managing Director, the Assistant Director and the Director of the said Chitty Company. In June, 2011, different complaints came from the subscribers against the persons running the chitty company. On those complaints, the Police registered crimes under Section 420 of Indian Penal Code and after investigation, the Police Submitted final report under Section 420 of I.P.C against the Directors including the Managing Director and also the petitioner herein, on the allegation that she was Office Assistant-cum-

Manager of the Chitty Company and she had some role in the alleged misappropriation of amounts and cheating. The petitioner now seeks orders quashing the prosecution on the ground that she was only an employee of the company, and that she had no role at all in the dealings of the company except as a clerical staff, and she had not appropriated any amount from the funds of the company during her tenure as clerical staff.

2. I heard both sides and perused the materials including the complaint made by the subscribers and also the final report submitted by the police. The petitioner has produced some documents showing that she was only a clerical staff of the Chitty Company, and that she had resigned on 18.12.2011. On a perusal of the different complaints, which led to the registration of crime, I find that no complaint contains definite allegation against the petitioner herein. The definite allegations are against the other accused Nos.1 to 3, who are the Managing Director, the Assistant Director and the Director of the Chitty Company. The final report submitted by the police does not

show how the petitioner had any vicious role in the alleged transaction of misappropriation or cheating. The final report also does not explain how a clerical staff could involve in the alleged misappropriation or cheating. It appears that the Police proceeded against her and submitted final report just because she was also a staff of the company. As a staff, she can be prosecuted only if there are definite materials implicating her in the alleged dealings and dishonest misappropriation of the funds of the company. But here, I find nothing to implicate here, or to show that she had any involvement or role in the alleged transactions or dealings. The persons, who conducted the Chitty Company are the accused Nos.1 to 3. Normally, they must be held liable and responsible for the acts and deeds of the company including misdeeds and misappropriation. A clerical staff or other staff of the company can be prosecuted only if there is definite material to show that clerical staff had some role in the alleged transaction. Here there is no material against the petitioner herein. The final report shows that she was Office Assistant-cum-Manager,

but the materials produced by the petitioner show that she was only a clerical staff. The Police has not produced anything to show that the petitioner herein was the Manager of the Chitty Company. Even as per the prosecution records, the management of the Chitty Company was in the hands of the 1<sup>st</sup> accused as Managing Director. It is not known how the petitioner happened to be prosecuted as Manager when she was only a clerical staff. Thus, on a perusal of the entire prosecution records, I find nothing to implicate the petitioner herein in the transaction of misappropriation or cheating alleged against the accused Nos.1 to 3 as Managing Director, the Assistant Director, and the Director of the Company, which cheated many subscribers. I find that the prosecution against the petitioner herein is liable to be quashed in the absence of any material against her.

In the result, this petition is allowed. The prosecution against the petitioner herein in C.C No.711 of 2012 of the Chief Judicial Magistrate's Court, Kalpetta will stand quashed under Section 482 of the Code of Criminal

Procedure. Accordingly, the petitioner will stand released from prosecution, and the bail bond if any, executed by her will stand discharged.

**Sd/-  
P.UBAID  
JUDGE**

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/True copy/

P.S to Judge