

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

CrI.MC.No. 4232 of 2015 ()

**SC.NO. 403/2014 OF VIII ADDL. DISTRICT & SESSIONS COURT,
FAST TRACK (ADHOC-II), ERNAKULAM
CRIME NO. 1889/2013 OF PANANGAD POLICE STATION, ERNAKULAM DISTRICT**

PETITIONER(S) :

1. **NAZEER @ BAI NAZEER**
S/O. SHAMSUDEEN, THETTEKKADU VEEDU, MANAKKACHIRA BAGAM
NETTUR KARA, MARADU VILLAGE, ERNAKULAM DISTRICT.
2. **NIXON @ TINU,**
S/O. XAVIER, PUTHANPADATHU VEEDU, VELI BHAGAM
FORT KOCHI KARA, RAMESWARAM VILLAGE.
3. **SIJU @ BHARATHAN SIJU,**
S/O. DASAN, NELLIKKUNNATHU VEEDU, NETTUR P.O.
MARADU VILLAGE.
4. **PRAVEEN,**
S/O. PAUL, PULIKKAL VEEDU, KOCHUPARAMBU LANE
ATHIPPODI ROAD, MUNDAMVELI.
5. **NAZEER @ PULI NAZEER,**
S/O. KAREEM, PERINGATTUPARAMBU VEEDU, NETTUR DESOM
MARADU VILLAGE.
6. **PRAJEESH,**
S/O. SHANMUGHAN, THEVARUPARAMBIL VEEDU
PULIKKILLAM CROSS ROAD, VAZHAKKAD P.O., KAKKANAD.
7. **SREEKUMAR,**
S/O. MANI, CHAKKALAKKAL VEEDU, MATTUMMAL
THEVARA, ERNAKULAM DISTRICT.

BY ADVS.SRI.DEEPU THANKAN
SRI.THOMAS C. KONDOLLY
KUM.P.V.JAYALAKSHMY

RESPONDENT(S):

**1. STATE OF KERALA
REP. BY THE SUB INSPECTOR OF POLICE
ERNAKULAM TOWN SOUTH POLICE STATION
REP. BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA,
ERNAKULAM- 682 031.**

**2. BIJU,
S/O. VEERANKUTTY,
PADINJARE VEEDU, DHANYA JUNCTION
NETTUR, MARADU-682 040.**

**R1 BY ADDL. DIRECTOR GENERAL OF POLICE
SRI.TOM JOSE PADINJAREKKARA
R2 BY ADV. SMT.P.LISSY JOSE.**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 27-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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APPENDIX

PETITIONERS' ANNEXURES :

ANNEXURE A : COPY OF THE FINAL REPORT AND CHARGE SHEET FILED BY THE POLICE IN CRIME NO. 1889/2013 OF PANANGAD POLICE STATION, ERNAKULAM DATED 4/4/2014 BEFORE THE ADDL. CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM.

ANNEXURE B COPY OF THE STATEMENT U/S. 164 OF THE DEFACTO COMPLAINANT RECORDED BY THE JUDICIAL FIRST CLASS MAGISTRATE, KOLENCHERY DATED 24/1/2014 IN CRIME NO. 1889/2013 OF PANANGAD POLICE STATION, ERNAKULAM.

ANNEXURE C COPY OF THE AFFIDAVIT FILED BY THE DEFACTO COMPLAINANT DATED 3/7/2015.

ANNEXURE D COPY OF THE FIR IN CRIME NO. 1889/2013 DATED 29/12/2013 OF PANANGAD POLICE STATION.

ANNEXURE E COPY OF THE JUDGMENT IN SC NO. 397/2014 BEFORE THE ADDL. SESSIONS JUDGE-V, ERNAKULAM DATED 30/6/2015 IN CRIME NO. 1890 OF 2013 OF PANANGAD POLICE STATION.

RESPONDENT'S ANNEXURES :

ANNEXURE R1(a) : COPY OF THE DETAILED LIST OF CRIMES IN WHICH 1ST PETITIONER AND HIS ACCOMPLICES WERE INVOLVED.

//TRUE COPY//

P.S. TO JUDGE

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ALEXANDER THOMAS, J.

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Crl.M.C.No. 4232 of 2015

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Dated this the 27th day of July 2015

O R D E R

The petitioners herein are accused in S.C.No.403/2014 on the file of the VIII Addl. Sessions Judge, Fast Track (Adhoc II), Ernakulam. The offence alleged against the petitioners is punishable under Sec.395 (dacoity) of the I.P.C. The gist of the prosecution case is that the petitioners have summoned the defacto complainant (R-2 herein) to the place of occurrence and demanded an amount of Rs. 5 lakhs from him and thus collected Rs. 1.25 lakhs from him.

2. The main prayer in this Crl.M.C. is for an order from this Court for quashment of the impugned criminal proceedings on the ground of settlement between the petitioners and the 2nd respondent defacto complainant as borne out by Anx.C affidavit sworn to by the 2nd respondent defacto complainant, wherein he has stated that he has no objection for quashment of the impugned criminal proceedings against the petitioners.

3. Heard Sri.Deepu Thankan, learned counsel for the

petitioners, Smt.Lissy Jose, learned counsel appearing for the 2nd respondent and Sri.Tom Jose Padinjarakkear, learned D.G. of Prosecution & Addl. State Prosecutor appearing of the 1st respondent State of Kerala.

4. One of the main issues to be decided in this Crl.M.C. is as to whether the impugned criminal proceedings could be considered for quashment mainly on the ground of settlement arrived at between the petitioners/accused and the 2nd respondent defacto complainant. The matter in issue in this regard is no longer res integra by the celebrated ruling of the Apex Court in Gian Singh v. State of Punjab and another reported in 2013 (1) SCC (Cri) 160 = (2012) 10 SCC 303, wherein it has been held by the Apex Court that even non-compoundable offences mainly involving matrimonial commercial or cases having civil dispute implications and certain other cases, etc. could be considered for quashment on the ground of settlement, subject to the guidelines laid down in that decision. However, in paragraph 61 of the decision in Gian Singh's case (supra) the Apex Court has held that heinous and serious offences of mental depravity or offences like murder (Sec.302 I.P.C.), rape (Sec.376 I.P.C.), dacoity (Sec.395 I.P.C.), etc. cannot be fittingly

quashed even though the victim or victim's family and the offender have settled the dispute. That such other offences, whose implications do not bear out much public interest, but mainly arising out of personal disputations, etc could be considered for quashment. That such serious offences are not private in nature and have a serious impact on society and similarly any compromise between the victim and the offender in relation to offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. That the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, etc. It is indisputable that the offence involved in this case is one under Sec. 395 (dacoity) and therefore the prayer for quashment mainly on the ground of settlement between the parties need not be considered by this Court.

5. The alternative submission made by the learned counsel for the petitioners is that the petitioners have not actually committed the offence of decoity (Sec. 395 I.P.C.) as alleged by the prosecution. That in fact the petitioners as well as the defacto

complainant were jointly doing real estate business and they were entitled for commission/brokerage of one transaction and that the 2nd respondent had received the same from the person, who sold the property for and on their behalf of the petitioners as well. That the petitioners were not aware of the amounts so collected by the 2nd respondent behind back of the petitioners. That on coming to know the same, the petitioners demanded the same from the defacto complainant, who in turn agreed to pay their portion of Rs. 1,25,000/- out of the total commission of Rs. 5 lakhs received by the 2nd respondent. Later the defacto complainant filed a compliant before the Police, which led to the impugned crime. That this case is in fact only one involving civil nature of disputes and that it is not merely the Section/offence that is alleged in the recitals of the FIR that is most important, but rather substance and essence of the transaction that emerge between the parties' conduct. That the said transaction between the petitioners and the 2nd respondent is purely civil in nature and that such disputes cannot be converted into criminal proceedings by the defacto complainant which amounts to abuse of process of the court. That if the substance and essence of the entire transaction are seen and

appreciated, it will be revealed that what is alleged in the impugned criminal proceedings is only allegation for the sake of roping them in for criminal charges raised by the defacto complainant at that point of time and that now he has clearly stated before this Court that he has no disputes with the petitioners and that he has no objection for quashment of the impugned criminal proceedings. That therefore if the veil of the entire transaction is lifted, it can be seen that the invocation of the section/offence in the FIR is only a pretext to block the petitioners' lawful claim for the legitimate commission amount due from the 2nd respondent, etc. and therefore no offence under Sec.395 I.P.C. or under any of the provisions of law is disclosed in the facts of this case and that the matter could be quashed, etc.

6. The second aspect raised by the petitioners is that there is long and unexplained inordinate delay in filing the complaint or registration of the complaint by the Police and that the alleged incident is said to have occurred as per the prosecution on 8.7.2013, whereas impugned FIR was filed only on 29.12.2013 and that no explanation has been furnished in the final report explaining such long unreasonable delay for not filing the FIR immediately after

the alleged incident. That this is only an after-thought of the defacto complainant to institute a false case against the petitioners/accused etc.

7. The third contention raised by the petitioners is that the defacto complainant has given a statement before the Judicial First Class Magistrate's Court, Kolenchery under Sec.164 of the Cr.P.C. explaining the fact that there were business transactions between the petitioners and the defacto complainant and that the amount demanded by the petitioners were only their portion of the amount, which was unlawfully taken by the defacto complainant. Therefore, even if the trial proceeds, the main witness concerned, the defacto complainant, cannot submit against his own statement recorded by the learned Magistrate under Sec. 164 of the Cr.P.C. Therefore, any further continuance of the impugned criminal proceedings would be a mere wastage of time and energy as the chance of conviction is too remote and bleak.

8. Per contra, Sri.Tom Jose Padinjarekkara, learned Addl. D.G. of Prosecution & Addl. State Proecutor appearing for the respondent State of Kerala submits, on the basis of the instructions in the statement dated 24.7.2015 filed on behalf of the respondent

investigating officer, that the aforestated contentions of the petitioners are untenable and unsustainable. That during the course of the investigation, the 2nd respondent had stated that he was doing real estate business by himself and that he had no connection with the petitioners in any way and that the investigation has revealed that no business dealings had existed between the petitioners and the 2nd respondent at any time. In this regard, the averments in paras 4 and 5 of the aforestated statement are as follows:

“4. The averment of the petitioner, that he was only doing real estate business with the second respondent is not correct. During the course of investigation the second respondent, (the defacto complainant) had stated that he was doing real estate business by himself and he had no connection with the petitioner in any way. Investigation conducted in this regard had revealed that no business dealings were existed between the petitioner and the second respondent at any time and the averment of the petitioner was not correct.

5. Another averment of the petitioner is that he collected only the legal commission involved in a joint real estate business between him and the second respondent. This averment also is not correct. In the investigation conducted in this case there is no evidence vindicating the claim that both were doing the real estate business jointly. Since no real estate business transactions were revealed in between the two, the money the petitioners collected, form (sic) the second respondent could only an act of dacoity. A simple verification of the past of the petitioners would prove the possibility of dacoity beyond any doubt. When looking into the antecedents of the 1st petitioner, he was arrayed as accused of as many as 27 criminal cases of various degrees, and so notorious for his criminal acts, in and around the Kochi city. The claim of the petitioners that the amount collected from the second respondent was a legally entitled brokerage or commission involved in a real estate business, must be seen as an attempt to cover up the offence he committed against the second respondent.”

9. Regarding the contention based on the delay in registering the FIR, the learned Addl. D.G. of Prosecution submitted that the delay in the defacto complainant reporting the above incidents to the Police was due to his fear and apprehension about the petitioners. That the 2nd respondent was well aware of the diabolical nature of the petitioners and that fear about his own life and his family members that deterred the 2nd respondent from approaching the Police with his complaint against the petitioners. That the 2nd respondent could gather courage to approach the Police after he knew through the media that the 1st petitioner was arrested by the Police for crimes he committed elsewhere. That the 2nd respondent has thus a valid and strong ground to justify the delay on his part.

10. It is further submitted by the learned Addl. State Prosecutor that the contention raised by the petitioners on the basis of the Sec.164 statement of R-2 is incorrect and misleading. In the said Sec.164 statement, R-2 had clearly deposed before the learned jurisdictional Magistrate that the petitioners had demanded Rs.5 lakhs, which he refused to pay at the first instance and that it was only after the 2nd respondent was put into a dispute, he was forced

to give Rs. 1.25 lakhs to the petitioners. That it could be presumed what the nature of the said dispute could be, to which R-2 would have been subjected to, by a person like the 1st petitioner, who has involved in so many nefarious crimes. The said Sec.164 statement further reveals that the petitioners had approached R-2 demanding to withdraw the case filed by R-2 and that the petitioners were ready to give the money back to the 2nd respondent, if he withdraws the case and that all these doings clearly prove that the petitioners and accomplices have really involved in the act of extortion of money from the 2nd respondent and that Sec.164 statement of R-2 is actually against the case now being projected by the petitioners. It is further pointed out that by Addl.D.G. of Prosecution that on enquiry about the affidavit said to have been given by R-2, which is produced before this Court, R-2 had informed the Police that the very affidavit was also done in pursuance of persuasion, after intimidation and threat from the people close to the petitioners. Further, that after he had given a signed statement revealing all these facts before the investigating officer, connected with this case, the Police have reliably thus learnt that the petitioners have really intimidated R-2 and his whole family and that the 2nd

respondent has a valid and strong complaint against the petitioners and any pretence other than this is false.

11. Lastly, it is submitted by Sri.Tom Jose Padinjarekkara, learned Addl.D.G. of Prosecution & Addl. State Prosecutor that the petitioners are persons, who are accused in so many criminal cases of various degrees throughout Kochi city. The details in that regard are given in para 10 of the aforestated statement, which reads as follows:

“10. The petitioners are persons accused in so many criminal cases of various degrees throughout the Kochi City. The 1st petitioner himself has been found involved in more than 25 cases for the last 10 years. The very mentioning of the name of the petitioner Nazeer @ Bai Nazeer would instantly trigger fear and disgust in the whole public living in and around the Kochi city. The criminal activities of the petitioner and his gang in the Kochi city are chilling and its still raw in the minds of many people living here. One case perpetrated by the petitioner and his gang stands apart by its gruesome nature. In the crime 1242/09U/S 450, 307, 143, 147,148,120 (B) R/W 149 and 27 of Arms Act of Panangad P S, the petitioner and his accomplice trespassed into the residence of the victim Jamal and chopped off his right hand and left leg. The ill fated victim, Jamal who was a trade union leader at that time was instrumental in mobilizing the public opinion against the petitioner at Nettoor and Panangad region. By attacking a prominent trade union leader in such a brutal style, the petitioner and his gang could send a very violent message to those who dare to complaint against him. It is this very reason that public and the victims of the criminal acts the petitioner precipitated throughout the city, do not turn up before the law enforcing agencies with their complaint. A detailed list of crimes in which 1st petitioner and his accomplices were involved is produced herewith and marked as Annexure R1(a).”

12. The details of various crimes pending as against the petitioners herein are given in detail in Anx.R-1(a) produced along

with above said statement, which is a four page long statement giving the details each of the crimes pending against the petitioners concerned. But suffice to say that the submission made by the learned Addl. State Prosecutor that the petitioners are involved in very many cases and that too of nefarious nature, is supported by credible materials made available for the perusal of the court. It is finally pointed out by the learned Addl. State Prosecutor that the petitioners are still capable of unleashing violence of any degree and fear among the public and even if most of them are in jail, many instances are there in which the petitioners are found involved, went unreported due to the factors of fear and intimidation as stated above.

13. Having given anxious consideration for the rival contentions made from across the Bar, this Court is considered opinion that it is not necessary to adjudicate conclusively on these meticulous contentions urged by either side. But suffice to say, this Court is of the considered opinion that the submissions and materials pointed out by the learned Addl. D.G. of Prosecution, would persuade this Court to reach the unerring conclusion that the extraordinary discretionary jurisdiction vested with this Court under

Sec.482 of the Code of Criminal Procedure by way of inherent powers of this Court, should not be exercised in the facts of this case. The very nature of contention sought to be projected by the petitioners is one which would eminently fall within the province of the trial court and the appeal/revision courts. Therefore, adjudication of these issues would certainly be prejudicial to either side as those are matters which ought to be raised and considered duly in the trial process. Any adjudication on these aspects would amount to short-circuiting the trial process, in a case where discretion should not be exercised. Therefore, this Court has no hesitation to come to the conclusion that no interference is called for in the facts and circumstances of this case for considering the prayer for quashment on the aforesaid alternate contentions raised by the petitioners.

14. Needless to say, the findings and observations in this order are made only in the context of deciding the issue as to whether the prayer for quashment could be considered and such findings and observations in this order shall not in any way trammel or influence the outcome of the impugned criminal proceedings in any manner.

15. At this juncture, Sri.Deepu Thankan, learned counsel for the petitioners submitted that the petitioners or some among them are in jail and that this Court may order that the court below should commence and conclude the trial process within the shortest time possible. As this contention has not been made out in the present petition, this Court is not appraised of the details in that regard so as to consider that plea. It is made clear that this order will not preclude the petitioners from instituting appropriate proceedings for seeking such relief, in accordance with law.

With these observations, this Crl.M.C. stands dismissed.

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Sd/-
ALEXANDER THOMAS, JUDGE

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P.S. to Judge