

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

Cr1.MC.No. 3161 of 2014  
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IN CC 522/2012 of J.M.F.C.-I, CHENGANNUR

CRIME NO. 1150/2011 OF CHENGANNOOR POLICE STATION, ALAPPUZHA

PETITIONER/2ND ACCUSED:  
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V.J.JOHN, AGED 66 YEARS,  
S/O.JOHN VELOORUZHATHIL,  
VELOORUZHATHIL VEEDU,  
THITTAMEL MURI, CHENGANNUR VILLAGE,  
ALAPPUZHA DISTRICT.

BY ADVS.SRI.P.HARIDAS  
SMT.S.SIKKY

RESPONDENTS/STATE, COMPLAINANT & DEFACTO COMPLAINANT:  
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1. STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, PIN - 682 031.
2. SUB INSPECTOR OF POLICE,  
CHENGANNUR POLICE STATION, PIN - 689 101.
3. JACOB MATHEW, AGED 45 YEARS,  
KIZHAKKE MAYALIL, KOYIPRAM,  
PATHANAMTHITTA - 689 645.

R1 & R2 BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 12-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 3161 of 2014  
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APPENDIX

PETITIONER'S ANNEXURES:  
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ANNEXURE-1: COPY OF THE FIR NO.1150/2011 OF CHENGANNUR POLICE  
STATION DATED 10.12.2011

ANNEXURE-2: COPY OF THE FINAL REPORT DATED 10.12.2011 IN CRIME  
NO.1150/2011 OF CHENGANNUR POLICE STATION.

ANNEXURE-3: COPY OF PRIVATE COMPLAINT DATED 30.9.2011

ANNEXURE-4: COPY OF STATEMENT OF ACCOUNT DATED 1.2.2014 OF THE  
PETITIONER.

RESPONDENTS' ANNEXURES:  
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NIL

//TRUE COPY//

P.A TO JUDGE

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**P.UBAID, J.**

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**Crl.M.C No.3161 of 2014**  
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Dated this the 12<sup>th</sup> day of February, 2015

**O R D E R**

The petitioner herein is the 2<sup>nd</sup> accused in C.C. No.522/2012 of the Judicial First Class Magistrate Court I, Chengannur. This is a prosecution initiated by the 3<sup>rd</sup> respondent herein on a complaint alleging the offence under Section 420 of the Indian Penal Code. The complaint was forwarded for investigation to the police under Section 156 of the Code of Criminal Procedure. After investigation the police submitted final report under Section 420 of the Indian Penal Code against two accused. Cognizance was taken by the learned Magistrate on the final report as C.C No.522/2012. The first accused is none other than the son of the 2<sup>nd</sup> accused. The petitioner seeks orders quashing the prosecution as against him on the ground that the complaint filed by the 3<sup>rd</sup> respondent does not contain anything to implicate him, or the complaint does not contain the necessary elements and ingredients of the offence of cheating as against him.

2. The 3<sup>rd</sup> respondent remained absent inspite of

notice. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

3. On hearing both sides and on a perusal of the materials I find that Annexure A3 complaint filed by the 3<sup>rd</sup> respondent does not contain any definite allegation as against the petitioner herein, constituting the offence of cheating. All definite allegations are in fact against the 1<sup>st</sup> accused, that the 1<sup>st</sup> accused received money from the complainant, issued a cheque to him making the complainant believe that the bank account belongs to him, but later the complainant realised that he was in fact being cheated by the 1<sup>st</sup> accused by issuing a cheque towards the account of his father. It is not known how the father was a party in the transaction, and the complaint also does not show that the father had in any manner cheated the complainant. The father cannot be made answerable for the mischief done by the son. Probably the complainant has some other ulterior motive in arraigning the father also as accused. But such things, which will amount to abuse of legal process, cannot be allowed. The son will have to answer the charge, when the allegations are definitely and solely against him in the complaint and in the final report. I find that the prosecution

against the father is liable to be quashed, in the absence of any definite material constituting the offence of cheating as against him in the complaint or in the final report.

In the result, this Criminal Miscellaneous Case is allowed. The prosecution against the petitioner herein as the 2<sup>nd</sup> accused in C.C No.522/2012 of the Judicial First Class Magistrate Court I, Chengannur 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 him will stand discharged. The prosecution in C.C No.522/2012 will continue against the first accused.

**P.UBAID  
JUDGE**

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