

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

Cr1.MC.No.4474 of 2015 ()

(CRIME NO.257/2015 OF EDACHERY POLICE STATION, KOZHIKODE DIST)

PETITIONER(S) /ACCUSED:

RAZAK, AGED 42 YEARS,
S/O.ASSAINAR, KOOMAMKULANGARA, ERAMALA AMSOM,
ORKETTERI DESOM, KOZHIKODE DISTRICT.

BY ADVS.SRI.P.N.SUKUMARAN
SRI.K.A.ANAS

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM.
2. SUB INSPECTOR OF POLICE,
EDACHERY POLICE STATION, KOZHIKODE DISTRICT-673 001.
3. BASHIR.T.P., AGED 56 YEARS,
S/O.MAMMUKUTTY HAJI, THAZHEPUNATHIL, KUNNUMMAKKARA,
KOZHIKODE DISTRICT-673 001.

R3 BY ADV. SRI.ZUBAIR PULIKKOOL
R1 BY PUBLIC PROSECUTOR SRI. SHIBU JOSEPH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
19-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

:2:

Cr1.MC.No. 4474 of 2015 ()

APPENDIX

PETITIONER(S) ' EXHIBITS
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ANNEXURE-I: CERTIFIED COPY OF THE FIR IN CRIME NO.257/2015 OF EDACHERY
POLICE STATION.

RESPONDENT(S) ' EXHIBITS
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ANNEXURE R1 (a): COPY OF THE ORDER NO.U4/130353/2015/PHQ DTD 11.08.2015

ANNEXURE R2 (b): COPY OF THE WIRELESS MESSAGE ADDRESSED TO STATION HOUSE
OFFICER, EDACHERY POLICE STATION.

ANNEXURE R1 (c): COPY OF THE COMMUNICATION FROM THE ASSISTANT
FOREIGNER'S REGIONAL REGISTRATION OFFICER DATED
20.08.2015

// True Copy//

P.A. to Judge

SS

K. RAMAKRISHNAN, J.

Crl. M.C. No.4474 of 2015

Dated this the 19th day of November, 2015

ORDER

This criminal miscellaneous case is filed by the accused in Crime No.257/2015 of Edachery police station to quash the proceedings under Section 482 of the Code of Criminal Procedure.

2. The allegation of the defacto-complainant according to the petitioner is that, the defacto-complainant while working at Dubai took a house on rent from a Dubai national on an yearly rent of 2.5 lakh Dirhams. The said house was subsequently sublet to the petitioner with the consent of the owner on 25.10.2008 and he had paid the rent for a period of one year and subsequently he left Dubai without paying the rent for six months. Thereafter the owner of the house filed a complaint against the defacto-complainant for arrears of rent and he paid the amount and

settled the above case. When he demanded the amount paid by him as arrears of rent from the petitioner, he refused to pay the amount. So according to the defacto-complainant the petitioner had committed the offence punishable under Section 420 and 406 of the Indian Penal Code. On the basis of the statement given by the defacto-complainant Annexure-I crime was registered as Crime No.257/2015 of Edachery police station of Kozhikode District under Section 420 and 406 of the Indian Penal Code. He had not made any complaint against the petitioner at Dubai where the alleged offence was committed and sanction under Section 188 of Criminal Procedure Code is also required. Further even going by the allegations, there is no ingredients of cheating or misappropriation is made out and it is purely a civil dispute and proceeding with the investigation will only amount to abuse of process of court, hence he filed the petition for quashing the proceedings.

3. Government Pleader filed a statement denying the allegations and have stated that there is no bar

in proceeding with the investigation and if the petition is allowed, the complainant will be losing the opportunity of being indemnified the loss sustained by him.

4. Heard the counsel for the petitioner Sri.P.Sukumaran and counsel for the 3rd respondent Sri.Zubair Pulikkool and Public Prosecutor Sri.Shibu Joseph appearing for respondents 1 and 2.

5. Counsel for the petitioner submitted that even going by the allegations in the first information statement, his grievance was that, he was compelled to pay the alleged arrears of rent to the owner of the house which the petitioner ought to have paid and it has to be recorded from him and that will only amount to civil liability and no criminal offence is made out and it is fit for invoking Section 482 of the Code to quash the proceedings.

6. On the other hand, the counsel for the 3rd respondent submitted that he had cheated him and he had left Dubai without paying rent to the land lord for 6 months which he was compelled to pay to settle the case filed by

the landlord at Dubai. Further it is not a fit case to invoke the power under Section 482 of the Code at this stage and the investigation is in the preliminary stage and evidence has to be collected for the purpose of unearthing the intention of the petitioner at the time when he entered into the contract with the petitioner.

7. Public Prosecutor submitted that the investigation is at primitive stage and only on collection of evidence the intention of the petitioner at the time of entering into the contract can be traced out by circumstantial evidence.

8. Even as per the allegations in the first information statement given by the 3rd respondent, his case was that, he had taken a building on rent from an Arab national while he was in Dubai on an yearly rent of 2.25 Dirhams. Since he was not in need of the building, he had sublet the building to the petitioner with the consent of the house owner on the same terms and the petitioner herein had paid rent for one year. Thereafter without paying the

rent for six months, he left Dubai. Since the rent was in arrears, the house owner filed a case against the 3rd respondent and he settled the same by paying one lakh Dirhams equivalent to ₹17,00,000/- of Indian currency. When he demanded the amount with the petitioner he did not pay the amount and thereby he had cheated him.

9. Even going by the allegations in the first information statement, there is no allegation that even at the time when he entered the agreement with the petitioner, he had an intention to cheat the 3rd respondent. Even according to the petitioner he had paid the rent for one year and only thereafter he committed default and he paid the defaulted amount to the owner and he wanted to recover the amount from the petitioner and since he did not pay the amount he filed the complaint. On going through the allegation of the complainant itself, it will be seen that, it is only a breach committed by the petitioner. If at all the allegations are true, he had to pay the amount which the petitioner ought to pay towards the arrears of rent and he

wanted to recover the amount, for which the remedy of the petitioner is not to approach the criminal court, but to approach the civil court for recovery of the amount. So it is only a pure civil dispute between the parties and no criminal offence has been made out. No amount due to the petitioner has been entrusted with the petitioner which is in unlawful possession of the petitioner, so as to attract the offence under Section 406 of the Indian Penal Code.

10. Even going by the allegations, there is no ingredient required for attracting the offence under Section either 420 or 406 of the Indian Penal Code has been made out. In the decision reported in **Wilson M.K. v. State of Kerala and Another (2014 KHC 311)**, in a similar situation this court has observed that, even if entire allegation is accepted, it will only amount to civil dispute and no criminal offence is made out and if the ingredients of offence of cheating or misappropriation is missing in the complaint, then proceeding with the criminal prosecution is nothing but an abuse of process of court and this court can

invoke the power under Section 482 of the Code of Criminal Procedure and quash the proceedings. Accordingly the same principle is applicable to the facts of this case as well.

So the petition is allowed and further proceedings in Crime No.257/2014 of Edachery police station of Kozhikode District is hereby quashed. It is needless to say, dismissal of this petition will not affect the right of the 3rd respondent to proceed against the petitioner for recovery of the amount, if any due under due process of law.

Sd/-
K. Ramakrishnan, Judge

// True Copy//

P.A. to Judge