

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

Cri.MC.No. 4689 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN CMP 3361/2015 of C.J.M., KOLLAM
CRIME NO. 1212/2015 OF KOLLAM EAST POLICE STATION

PETITIONER(S)/ACCUSED NO.1 AND 2:

1. VEERABHADRAM
CHIEF MANAGER, UCO BANK, KOLLAM BRANCH
BEACH ROAD, KOLLAM
2. I.GOPAL
ASST. GENERAL MANAGER, UCO BANK, PONDICHERRY
(NOW AGM, ZONAL OFFICE NAGPUR)

BY ADV. SRI.H.RAMANAN

RESPONDENT(S)/COMPLAINANT :

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM 682031
2. M.K.VIJAYAKUMARAN PILLAI
S/O.MADHAVAN PILLAI, RATNAGIRI, ASRAMAM
KOLLAM 691002

R BY PUBLIC PROSECUTOR SMT.MAYA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26-10-2015,
ALONG WITH CRMC. 4690/2015, CRMC. 4691/2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

Crl.MC.No. 4689 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE 1:COMPLAINT FILED BY RESPONDENT 2 (CERTIFIED COPY)

ANNEXURE 2:FIR IN CRIME NO.1212/2015 OF KOLLAM EAST POLCE STATION (CERT.
COPY)

ANNEXURE 3:COMPLAINT'S COMPANY'S LETTER TO UCO BANK REGARDING
SETTLEMENT OF DUES(TRUE COPY)

ANNEXURE 4:UCO BANK'S LETTER IN REPLY TO DO (TRUE COPY)

ANNEXURE 5:CONSENT LETTER OF DIRECTORS(TRUE COPY)

RESPONDENT(S)' EXHIBITS : NIL

// True Copy //

PA to Judge

[CR]

B. KEMAL PASHA, J.

.....
Crl.M.C. Nos.4689, 4690 & 4691 of 2015
.....

Dated this the 26th day of October, 2015

O R D E R

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Alleging offences punishable under Sections 420, 409, 465, 468, 471 and 120B read with Section 34 IPC against the petitioners and two other persons, three private complaints were filed before the Chief Judicial Magistrate's Court, Kollam. Those three complaints were referred to the police under Section 156(3) Cr.P.C. and consequently, Crime Nos.1212/2015, 1211/2015 and 1195/2015 of the Kollam East Police Station were registered for the said offences. The 1st petitioner herein is the Chief Manager of UCO Bank, Kollam Branch and the 2nd petitioner is the Assistant General Manager, UCO Bank, Pondicherry.

2. It is a fact that proceedings under the SARFAESI Act was initiated at the instance of the Bank against the 2nd respondent in these matters for recovery of amounts due to the Bank from the said persons towards loan transactions. In the private complaint, it is alleged that the petitioners along with the other accused hatched a criminal conspiracy, forged and fabricated false documents, and made use of it as genuine for initiating SARFAESI proceedings.

3. The learned counsel for the petitioners has pointed out that the sale in the SARFAESI proceedings was held in these cases with the consent of the party, who had created equitable mortgage by way of deposit of title deeds. In such case, there was no room for filing such a private complaint alleging the aforesaid offences.

4. Going by the decision rendered by the Apex Court in ***Priyanka Srivastava and Another Vs. State of Uttar Pradesh and Others [(2015) 6 SCC 287]***, the present attempt in getting the crime registered on the basis of

private complaints is nothing but clear abuse of process of court and the FIRs are got registered against statutory authorities by misusing the remedy available under Section 156(3) Cr.P.C. In the case in the decision noted *Supra*, the borrower of a housing loan, who had failed to repay the loan amount to the Bank, against whom SARFAESI proceedings were initiated, had got the FIR registered against the statutory authorities by misusing the remedy available under Section 156(3) Cr.P.C. The Apex Court has cautioned the courts of the Magistrates in dealing with such situation.

5. If borrowers are allowed to have recourse to criminal law in the manner it has been taken in these cases, it needs no special emphasis to state, has the inherent potentiality to affect the marrows of economic health of the nation. If persons are alleged to have recourse to such procedure, the aim and objective of the SARFAESI Act as such would certainly be defeated. Matters being so, these are fit cases wherein Annexure-I complaints and Annexure-II

CrI.M.C.4689, 4690&4691/2015

: 4 :

FIRs against the petitioners, can be quashed.

In the result, these CrI.M.Cs. are allowed and Annexure-I complaints and Annexure-II FIRs against the petitioners are quashed.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/26/10

// True Copy //

PA to Judge