IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

Crl.MC.No. 5143 of 2015

CC 484/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT - I, CHENGANNUR
CRIME NO. 668/2011 OF CHENGANNOOR POLICE STATION, ALAPPUZHA
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PETITIONER(S)/ACCUSED A1,A3 TO A5:
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1. **KANAKAN, AGED 35 YEARS,**
   S/O RAMACHANDRAN, CHERIVU VEEDU, KEEZHCHERIMEL MURIYIL,
   CHENGANNUR VILLAGE, CHENGANNUR TALUK,
   ALAPPUZHA DISTRICT.

2. **VARGHESE, AGED 45 YEARS,**
   S/O JOSEPH, KAKKAYAM NAGER, HOUSE NO.26,
   THIRUPUR TALUK, POLLACHI, THAMILNADU STATE.

3. **SIVASANKARA PILLAI, AGED 55 YEARS,**
   S/O VASUDEVAN PILLAI, PRASANTH NILAYAM,
   MALAYALAPUZHA MURI, MALYALAPUZHA VILLAGE,
   PATHANAMTHITTA DISTRICT.

4. **HARRIS V.K.,**
   S/O MOOZA, V.K. HOUSE, 345/(2/245-F),
   V.K.HOUSE, KURICHYIL MURI, THALASSERY TALUK,
   KANNUR DISTRICT.

   BY ADV. SRI.AJITH MURALI

RESPONDENT(S)/COMPLAINANT:
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1. **STATE OF KERALA,**
   REPRESENTED BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM-682 031.

2. **THE BRANCH MANAGER,**
   HDFC BANK, NADAKAVE BRANCH, KOZHIKODE DISTRICT-673 001.

3. **THE CUSTOMER CARE OFFICER,**
   HDFC BANK, NADAKAVE BRANCH, KOZHIKODE DISTRICT-673 001.

   R1 BY PUBLIC PROSECUTOR SMT.P.MAYA
   R2-R3 BY ADV. SRI.T.RAJESH, SC

   THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 17-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

msv/

Crl.MC.No. 5143 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEXURE A: THE PHOTOCOPY OF THE CHARGE SHEET IN CRIME NO.484/2013 OF CHENGANNUR POLICE STATION.

ANNEXURE B: THE TRUE COPY OF THE STATEMENTS GIVEN BY THE RESPONDENTS 2 AND 3 BEFORE THE CHENGANNUR POLICE.

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

ALEXANDER THOMAS, J.

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Crl.M.C.No. 5143 of 2015

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Dated this the 17th day of August, 2015

O R D E R

The petitioners herein are accused Nos.1, 2 and 4 and 5 in the impugned Anx.A final report/charge sheet filed in the impugned Crime No.668/2011 of Chengannur Police Station, which has led to the institution of the Calendar Case, C.C.No.484/2013 on the file of the Judicial First Class Magistrate's Court, Chengannur, for offences punishable under Secs. 420, 468, 471, 411 read with Sec.34 of the I.P.C. Respondents 2 and 3 (who are the Branch Manager and Customer Care Officer of the HDFC Bank) are the defacto complainants in this case. It is pointed out that the Police aforestated investigation has not submitted charge sheet against the 3rd accused in the impugned crime.

2. It is pointed out that on 23.7.2011, the Toyota Innova car bearing registration No.KL.58-C.4205 was seized by the Chengannur Police and they registered the impugned Crime No.668/2011 of that Station, under Secs.41(1)(d) and 102 of the Cr.P.C. During the investigation the Police had deleted those

Sections and had incorporated Secs.379, 411, 468, 471 and 34 of the I.P.C. Now the offences alleged in Anx. A final report/charge sheet are those under Secs. 420, 468, 471, 411 read with Sec.34 of the I.P.C.

3. It is pointed out that the 4th petitioner has purchased the above vehicle as per hypothecation agreement with respondent Nos.2 and 3 (HDFC Bank, Nadakkavu Branch, Kozhikode) for an amount of Rs. 8.16 lakhs. Thereafter, as per sale agreement, the 1st petitioner has paid an amount of Rs. 6.5 lakhs and closed the loan transaction and they issued all the documents relating to the same, it is stated. That the 1st petitioner has directly paid the said amount to the respondent Bank and that they were fully aware about the sale agreement and they have issued all the relevant documents to the 1st petitioner, etc. The allegation in the impugned Anx.A final report/ charge sheet is that the 4th petitioner had handed over the vehicle to the 1st petitioner as per sale letter dated 11.12.2010 without informing the sale transaction to respondents 2 and 3 (HDFC Bank). Anx.A is the copy of the final report/charge sheet filed in the impugned Crime No.668/2011 of Chengannur Police Station. It is stated that at the time of registering of the above crime, the 1st petitioner was the owner of the vehicle and as stated above, the 1st

petitioner had purchased the vehicle from the 4th petitioner as per sale agreement dated 11.12.2010. Thereafter, the 1st petitioner has produced the sale agreement to the respondent Bank and that they received the amount of Rs. 6.5 lakhs from the 1st petitioner and they issued all the documents relating to the closure of the hypothecation agreement.

4. It is pointed out that that the contesting respondents 2 and 3 have no case that any amounts are now due towards the HDFC bank as per the hypothecation agreement. That the only case of the respondent Bank is that petitioners 1 and 4 have not informed the sale agreement executed between them and that this is evident from the Anx.B statement given by respondents 2 and 3 before the Chengannur Police. It is further pointed out that the petitioners and respondents 2 and 3 (HDFC Bank) have discussed the matter and agreed to settle the entire issues and that the respondent Bank has no interest to continue the case against the petitioners.

5. Respondents 2 and 3 have filed an affidavit dated 13.8.2015 in this case stating that the subject matter of the case has been settled between the parties as the entire amount has been settled. That the customer had executed an agreement in favour of

the petitioner concerned, who had produced the receipt on behalf of the customer. Further, it is stated in the said affidavit that the 1st petitioner was empowered to settle the account on behalf of the hirer, the Bank had issued no objection certificate and other documents to the 1st petitioner. That Form 29 was also signed by the customer in favour of the 1st petitioner herein and the entire amount has been settled resulting in issuance of all necessary documents. Accordingly, it is submitted in the said affidavit filed by respondents 2 and 3 (HDFC Bank) that the said respondent Bank has no objection whatsoever in allowing the prayer in this Crl.M.C. for quashment of the impugned criminal proceedings on the ground of the said settlement.

5. In a catena of decisions, the Apex Court has held that, in appropriate cases involving even non-compoundable offences, the High Court can quash prosecution by exercise of the powers under Sec.482 of the Cr.P.C., if the parties have really settled the whole dispute or if the continuance of the prosecution will not serve any purpose. Here, this Court finds a real case of settlement between the parties and it is also found that continuance of the prosecution in such a situation will not serve any purpose other than wasting the precious time of the court, when the case ultimately comes before

the court. On a perusal of the petition and on a close scrutiny of the investigation materials on record and the affidavit of settlement and taking into account the attendant facts and circumstances of this case, this Court is of the considered opinion that the legal principles laid down by the Apex Court in the cases as in Gian Singh v. State of Punjab reported in 2013 (1) SCC (Cri) 160 = (2012) 10 SCC 303 and Narinder Singh and others v. State of Punjab and anr. reported in (2014) 6 SCC 466, more particularly paragraph 29 thereof, could be applied in this case to consider the prayer for quashment. In view of the decision in Gian Singh's case supra it cannot be said that B.S.Joshi [2003 (2) KLT 1062 (SC)] = [(2003)4 SCC 675], Nikhil Merchant [2008 (3) kLT 769 (SC)] = [(2008) 9 SCC 677] and Manoj Sharma [2008(4) KLT 417 (SC)] = (2008) 16 SCC 1] were not correctly decided. Examining the facts of this case, it can be seen that the respondent Bank has clearly stated that the entire matter between the petitioners and the respondent Bank has been settled and the 4th petitioner (customer) had executed an agreement in favour of the 1st petitioner, who had produced receipt on behalf of the 4th petitioner and that the 1st petitioner was empowered to settle the account on behalf of the 4th petitioner, who was the hirer and thereupon the respondent Bank has issued no objection certificate and other documents to the 1st petitioner and that Form 29 was also signed by the 4th petitioner in favour of the 1st petitioner and the entire amount had been settled resulting in issuance of all necessary documents by the bank. Further, it is clearly stated that respondents 2 and 3 (HDFC Bank) have no objection whatsoever in granting the prayer in this Crl.M.C. for quashment of the impugned criminal proceedings on the ground of aforestated settlement. Accordingly, it is ordered in the interest of justice that the impugned Anx.A final report/charge sheet filed in Crime No.668/2011 of Chengannur Police Station, which has led to the institution of Calendar Case, C.C.No.484/2013 on the file of the Judicial First Class Magistrate's Court, Chengannur, and all further proceedings arising therefrom pending against the petitioners stand quashed. If the seized vehicle is still with the custody of the Police, then the same shall be released forthwith.

With these observations and directions this Crl.M.C. stands finally disposed of.

Sd/-
sdk+ ALEXANDER THOMAS, JUDGE

///True copy///

P.S. to Judge