

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. 5426 of 2015 ()

CC. NO.921/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KALAMASSERY.

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PETITIONER/ACCUSED:

**RENJITH, S/O.UNNI NAIR,
THUNDIL KIZHAKATHU, KAIPPATTUR P.O.,
PIRAVAM, ARAKKUNNAM, ERNAKULAM DISTRICT.**

BY ADV. SRI.K.A.SALIL NARAYANAN.

RESPONDENTS/STATE AND COMPLAINANT:

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN- 682 031.**
- 2. SUB INSPECTOR OF POLICE,
KALAMASSERY POLICE STATION,
KALAMASSERY P.O., ERNAKULAM.**
- 3. BAJAJ FINANCE COMPANY LTD.,
MANJOORAN BUILDINGS, EDAPPALLY P.O, COCHIN- 682 024,
REP. BY ITS AREA COLLECTION MANAGER.**

**R1 & R2 BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN.
R3 BY ADV. SRI.T.S.RAJAN**

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

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

**ANNEXURE I:- CERTIFIED COPY OF THE FIR IN CRIME NO. 865/2013
DATED 02/05/2013 OF KALAMASSERY POLICE STATION.**

**ANNEXURE II:- CERTIFIED COPY OF THE CHARGE IN CC. NO.921/2015
DATED 03/10/2013.**

ANNEXURE III:- AFFIDAVIT OF THE 3RD RESPONDENT DATED 27/07/2015.

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

ALEXANDER THOMAS, J.

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Crl.M.C.No.5426 of 2015

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Dated this the 17th day of August, 2015

O R D E R

The prayer in this Criminal Miscellaneous Case instituted under Sec.482 of the Code of Criminal Procedure praying for invocation of the inherent powers conferred on this Court as per that provision, is for an order to quash the impugned Anx.II final report/charge sheet filed in Anx.i Crime No.865/2013 of Kalamassery Police Station, which has led to the institution of Calendar Case, C.C.No.921/2015 on the file of the Judicial First Class Magistrate's Court, Kalamassery and all further proceedings arising therefrom, on the ground of settlement between the petitioner accused and the 3rd respondent defacto complainant.

2. The petitioner herein is accused in the impugned Anx.1 – Crime No.865/2013 of Kalamassery Police Station, registered for offences punishable under Secs.420, 467, 468, 120B read with Sec.34 of the I.P.C. The Police, after investigation submitted the impugned Anx.II final report/charge sheet, which has now led the

institution of Calendar Case, C.C.No.921/2015 on the file of the Judicial First Class Magistrate's Court, Kalamassery in respect of the aforestated offences.

3. The impugned criminal proceedings were initiated at the behest of the defacto complainant (3rd respondent Bajaj Finance Company Ltd.). The gist of the allegation is that the petitioner had availed a vehicle loan from the 3rd respondent Finance Company and had sold it during the pendency of the hypothecation agreement by producing false documents and thereby caused loss of Rs.1,18,834/- to the 3rd respondent Finance Company.

4. It is pointed out that the petitioner is an MBA degree holder and after taking the loan, he had faced crucial financial crises and had approached the vehicle brokers to sell the vehicle and that he had informed them that the vehicle is under hypothecation, but they agreed that the monthly instalments would be paid by them. They had obtained sale letter and some other papers from the petitioner and that the alleged NOC and termination letter might have been produced by them, it is stated. That the vehicle was sold to a third party by the brokers and initially when the complaint was filed by the 3rd respondent, there were three accused, but when the

impugned Anx.II final report/charge sheet was filed, the other accused were deleted from the accused array. It is averred that the petitioner has never committed any offence as alleged. It is further pointed out that now the petitioner has remitted the entire loan amount and its interest, to the 3rd respondent and has settled the matter with the 3rd respondent Finance Company. That he is now unemployed and his uncle, one Sri.Reji Raghavan, who is working at Dubai, has offered a job to him. In view of the aforesaid settlement, the 3rd respondent Finance Company, who is the defacto complainant, has sworn to Anx.III affidavit and has stated that the entire disputes have been settled with the petitioner and they have no grievance against the petitioner and that they have no objection in the quashment of the impugned Anx.II criminal proceedings.

6. 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. It is clearly held in para 58 of *Gian Singh's* case supra, that in view of the principles held therein by the Apex Court, 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. However, the principles laid down in those Apex Court decisions could be applied in cases where predominantly the dispute is one arising out of commercial or contractual obligations or having a civil flavour. Therefore, it has to be assessed whether

the facts and circumstances of this case is one which it involves grave and serious allegations or whether predominantly the disputes have arisen out of commercial transactions or contractual obligations, etc. and whether the principles laid down in those Apex Court decisions could thus be fittingly applied in the facts of the case concerned.

7. On a consideration of the facts of this case, it can be seen that the 3rd respondent Finance Company has clearly stated in their sworn affidavit as per Anx.III that the allegation in the impugned complaint was that the petitioner accused had availed a vehicle loan of Rs.61,300/- from the 3rd respondent Finance Company and that he sold the vehicle during the pendency of the loan period allegedly using false documents and thereby caused a loss of Rs.1,18,834/- to the 3rd respondent. That the petitioner accused has fully settled the matter with the company and has remitted the entire amount due to the company and there is no default or dues pending from the petitioner accused , etc. and that they have no grievance against the petitioner and that they have no objection in quashing the impugned criminal proceedings pending against the petitioner accused, etc.

8. The petitioner is an unemployed M.B.A. degree holder. According to him, after availing the loan, he had faced grave financial crisis and was thus constrained to approach the vehicle brokers to sell his vehicle and that he had informed them that the vehicle is under hypothecation and that the brokers agreed that the monthly instalments would be paid by them and that they had obtained the sale letter and some papers from him and that the alleged NOC and termination letter must have been produced by them. That though there were initially three accused including the petitioner in the impugned Anx.I FIR, later the Police has deleted the other accused from the accused array in the impugned Anx.II final report/charge sheet. Even as per the admitted case of the 3rd respondent Finance Company, the total vehicle loan amount availed by the petitioner was only Rs.61,300/- and that he has now paid the entire amount due to the 3rd respondent company and that he has no further pending default or arrears, etc. That he is now unemployed and he has secured a job offer from Dubai due to the help of his uncle, etc.

9. On appreciating the thrust of the factual allegations in the impugned criminal proceedings as well as the crux of the

settlement, it can be seen that the disputes primarily arose out of commercial transactions and contractual obligations between the petitioner accused and the 3rd respondent Bajaj Finance Company. On consideration of the facts and circumstances of this case, this Court is of the considered opinion that the prayer for quashment of the impugned criminal proceedings on the ground of settlement could be considered in this case. Accordingly, the impugned Anx.II final report/charge sheet filed in the impugned Anx.A-1 FIR in Crime No.865/2013 of Kalamassery Police Station, which has now led to the institution of Calendar Case, C.C.No.921/2015 on the file of the Judicial First Class Magistrate's Court, Kalamassery, and all further proceedings arising therefrom pending against the petitioner herein stand quashed.

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

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Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge