

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

Crl.MC.No. 4338 of 2014

**CC 617/2014 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT, THALASSERY
CRIME NO. 572/2011 OF THALASSERY POLICE STATION, KANNUR**
.....

PETITIONER(S)/ACCUSED 1 TO 3:

1. KURIACHAN CHACKO, AGED 38 YEARS,
S/O P.V. CHACKO, MANAGING PARTNER, M/S LIS,
PALACKAL COURT, M.G.ROAD, ERNAKULAM-682 035.
2. ACHAMMA CHACKO, AGED 63 YEARS,
W/O P.V.CHACKO, PARTNER, M/S LIS,
PALACKAL COURT, M.G.ROAD, ERNAKULAM-682 035.
3. LINU JOY, AGED 42 YEARS,
W/O JOY JOHN, PARTNER, M/S LIS,
PALACKAL COURT, M.G.ROAD, ERNAKULAM-682 035.

BY ADV. SRI.R.SURENDRAN

RESPONDENT(S)/RESPONDENT:

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.
- * ADDITIONAL R2 IMPEADED
2. V.C.DAMODARAN, S/O.KUNHIRAMAN,
AGED 78 YEARS, RETIRED HEADMASTER,
RESIDING AT DWARAKA, P.O.VADAKKUMBAD,
THALASSERY, KANNUR - 670 109.
- * IS IMPEADED AS PER ORDER DTD.22.1.2015 IN CRL.MA.NO.8299/2014
IN CRL.MC.4338/2014.

R1 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
08-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEXURE A1: TRUE COPY OF COMPLAINT DATED 4.7.2011 APPENDED TO THE FIR
IN CRIME NO.572 OF 2011 OF THALASSERY POLICE STATION.**

**ANNEXURE A2: TRUE COPY OF FIR IN CRIME NO.572 OF 2011 OF THALASSERY
POLICE STATION.**

**ANNEXURE A3: TRUE COPY OF FINAL REPORT IN CRIME NO.572/2011 OF
THALASSERY POLICE STATION.**

**ANNEXURE A4: TRUE COPY OF THE DEPOSITION OF PW 1- V.C.DAMODARAN, IN
C.C.864 OF 2013 ON THE FILE OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE COURT, THALASSERY.**

**ANNEXURE A5: TRUE COPY OF THE DEPOSITION OF PW 2- V.C.DIVYA, IN C.C.864 OF
2013 ON THE FILE OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE
COURT, THALASSERY.**

**ANNEXURE A6: TRUE COPY OF THE JUDGMENT DATED 5.6.2014 IN C.C.864 OF 2013
ON THE FILE OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT,
THALASSERY.**

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

ALEXANDER THOMAS, J.

=====
Crl. M.C No.4338 of 2014
=====

Dated this the 8th day of June, 2015

O R D E R

The petitioners herein are the accused Nos. 1 to 3 in the impugned Annexure A2 crime No.572 of 2011 of the Thalassery Police Station registered for offences under Sections 406, 420 r/w 34 of IPC. The crime was registered on the basis of Annexure A1 complaint of the additional respondent No.2 herein made to the Superintendent of Police, Kannur alleging that from 1.10.2005 till 17.1.2006 he and his family members had purchased shares of 'LIS Deepasthambam' from the accused persons who were the persons managing the investment fund and when the de facto complainant requested for the refund of his investment, the petitioners / accused promised to return the same but did not keep their promise in spite of repeated requests. According to the petitioners even during investigation itself, petitioners made arrangements to make payment to the complainant and that the matter was said to have been settled on 26.8.2011 itself through cheque. But after investigation, the police submitted the impugned Annexure A3 final

report/charge sheet in the above said crime which led to the pendency of calender case, C.C No. 864/2013 on the file of the Additional Chief Judicial Magistrate's Court, Thalassery. According to the petitioners they did not receive any summons and therefore they could not appear before the court and the case against them was split up. The learned Magistrate proceeded with trial of the remaining co-accused (A4). The court below, as per Annexure A6 judgment dated 5.6.2014 in C.C No. 864 of 2013 has acquitted the said co-accused person. Annexures A4 and A5 are the depositions of PW1 (contesting respondent No.2 herein) and PW2 respectively. The case against the petitioners have now been renumbered as C.C No.617/2014 on the file of the Additional Chief Judicial Magistrate Court, Thalassery. The petitioner contends that the substratum of the prosecution case is shattered by the acquittal of the co-accused as per Annexure A6 judgment. It is in the light of these aspects that the petitioners have preferred the instant Crl.M.C with the prayer to quash the impugned criminal proceedings against them.

2. Heard. Sri. R. Surendran, learned counsel for the

petitioner and the learned Public Prosecutor Smt. Sareena George. From a perusal of Annexure A6 judgment it can be seen that PW1 stated that he has settled all the disputes amicably out of court and that he has no allegations against the accused and that he does not remember what he has stated in Ext. P1 statement. PW2 also deposed that she got back the amount deposited by her from the accused and that she has not raised any allegations against the accused therein and that she is not interested to proceed further with the matter. On this basis, the trial court held conclusively that there is no evidence whatsoever to connect the said co-accused with the criminal charges. From a mere reading of Annexure A6 judgment it can be seen that the substratum of the entire prosecution case not only as against A3 but also as against the petitioners herein (A1 and A2), is shattered by the acquittal of the co-accused as borne out by Annexures A4 and A5 depositions also.

3. Accordingly it is ordered that the impugned Annexure A3 final report/charge sheet filed in the impugned Annexure A2 Crime No.572 of 2011 of Thalassery police Station, which has now led to the pendency of Calender Case, C.C No. 617 of 2014 on the file of

the Additional Chief Judicial Magistrate's Court, Thalassery and all further proceedings arising therefrom pending against the petitioners are quashed.

Accordingly, the Crl.MC stands finally disposed of.

sd/-

sab

ALEXANDER THOMAS, JUDGE