

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

Crl.MC.No. 4712 of 2013 ()

CRIME NO. 1186/2013 OF PALAKKAD TOWN SOUTH POLICE STATION, PALAKKAD

PETITIONER(S)/PETITIONERS/ACCUSED NOS.1 TO 12:

1. K.I. OUSEPH JOY, AGED 54 YEARS,
S/O ENASSU, KOZHUKKULLIKKARAN HOUSE, KAINOOR P.O.,
KAINOOR, THRISSUR TALUK, PIN:680 014.
2. K.L.GEORGE,
S/O LASAR, KOONAM HOUSE, PONNUKKARA DESOM,
PUTHOOR VILLAGE, THRISSUR TALUK, PIN:680 306.
3. K.D.ANTO,
S/O K.A.DEVASSIKUTTY, PONNUKKARA P.O., THRISSUR TALUK,
PIN:680 306.
4. JENIS K.L.,
S/O K.P.LONAPPAN, KOTTALLUKARAN HOUSE, PUTHOOR P.O.,
THRISSUR DISTRICT, PIN:680 014.
5. K.I.WILSON,
S/O ENASSU, KOZHUKKULLIKKARAN HOUSE, PUTHOOR P.O.,
THRISSUR TALUK, PIN:680 014.
6. V.D.LONAPPAN,
S/OP DEVASSY, VADAKKAN HOUSE, OLLOOKKARA P.O.,
THRISSUR DISTRICT, PIN:680 655.
7. JOHN EAPEN,
S/O YOHANNAN EAPEN, KUTTIKANDATHIL HOUSE,
OLLOOKKARA P.O., THRISSUR DISTRICT, PIN:680 655.
8. ROSLY OUSEPH,
W/O P.T.OUSEPH, PELLISSERY HOUSE,
PALAKKAL, PELLISSERY P.O., THRISSUR DISTRICT,
PIN:680 027.
9. SOUMYA OUSEPH,
D/O P.T.OUSEPH, PELLISSERY HOUSE,
PALAKKAL, PELLISSERY P.O., THRISSUR DISTRICT,
PIN:680 027.

10. SONIA OUSEPH,
D/O P.T.OUSEPH, PELLISSERY HOUSE,
PALAKKAL, PELLISSERY P.O., THRISSUR DISTRICT,
PIN:680 027.

11.SANGEETHA OUSEPH,
D/O P.T.OUSEPH, PELLISSERY HOUSE,
PALAKKAL, PELLISSERY P.O., THRISSUR DISTRICT,
PIN:680 027.

12.SOBHA JOY, AGED 45 YEARS,
W/O K.I. OUSEPH JOY, KOZHUKKULLIKKARAN HOUSE,
KAINOOR P.O., KAINOOR, THRISSUR TALUK,
PIN:680 014.

BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SRI.M.REVIKRISHNAN
SRI.VIPIN NARAYAN

RESPONDENT(S)/RESPONDENT/DE FACTO COMPLAINANT AND STATE:

1. N.H.SARBUDHEEN, AGED 52 YEARS,
S/O N.P.HANEEFA RAWTHER, SHEREEFA MANZIL,
NANDANKEEZHAY, ANAMARI, MUTHALAMADA VILLAGE,
CHITTUR TALUK, PALAKKAD DISTRICT-678 121.

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.

R1 BY ADV. SRI.U.BALAGANGADHARAN
R2 BY PUBLIC PROSECUTOR SMT.MADHUBEN.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 01-07-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A: TRUE COPY OF THE PRIVATE COMPLAINT PREFERRED BY THE IST RESPONDENT HEREIN BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, PALAKKAD.

ANNEXURE B: TRUE COPY OF THE F.I.R IN CRIME NO.1186/2013 OF TOWN SOUTH POLICE STATION, PALAKKAD.

ANNEXURE C: TRUE COPY OF THE AGREEMENT FOR SALE OF PROPERTY ENTERED INTO BETWEEN PARTIES ON EITHER SIDE DATED 3.02.2012.

ANNEXURE D: TRUE COPY OF THE LAWYER NOTICE DATED 26.9.2012 CAUSED TO BE ISSUED BY THE PETITIONER 1 TO 11 TO THE IST RESPONDENT AND ONE ANOTHER.

ANNEXURE E: TRUE COPY OF THE CAVEAT FILED BY THE PETITIONER NO.1 BEFORE SUB COURT, PALAKKAD.

ANNEXURE F: TRUE COPY OF THE CAVEAT FILED BY THE IST RESPONDENT BEFORE THE SUB COURT, PALAKKAD.

RESPONDENT(S)' EXHIBITS

NIL

//True Copy//

P.A. To Judge

Bb

RAJA VIJAYARAGHAVAN V, J.

Crl.M.C.No.4712 of 2013

Dated this the 01st day of July, 2015

O R D E R

This is a petition filed under Section 482 of Code of Criminal Procedure.

2. The petitioners herein are the accused Nos.1 to 12 in Crime No.1186/2013 of the Town South Police Station, Palakkad. The said crime was registered against them for offence punishable under Section 420 read with Section 34 of the Indian Penal Code on the strength of a complaint preferred by the first respondent before the Chief Judicial Magistrate, Palakkad which was referred to the police under Section 156(3) of Code of Criminal Procedure.

3. The gist of the allegation in the complaint which is produced as Annexure A along with the Criminal Miscellaneous Case is that, petitioners 1 to 11 are the partners of a firm by name L J Motels. The 12th petitioner is the wife of the first petitioner. On 03.02.2012, Annexure C agreement was executed

in respect of an item of property having an extent of 1.6695 hectares which was owned by the firm in favour of the first respondent herein and one K.P.Najeeh for valid sale consideration. As per the terms of the agreement, a sum of Rs.1.2 Crores was received towards advance sale consideration. It is the case of the first respondent that the stipulation in the agreement was that the sale transaction should be completed within a period of 6 months. The petitioners went back on their promise and aggrieved by the same the aforesaid complaint was filed before the jurisdictional Magistrate alleging commission of offence under Section 420 of the Indian Penal Code.

4. I have heard the learned counsel appearing for the petitioners and also the learned counsel appearing for the first respondent.

5. The learned counsel for the petitioners has taken me through the agreement and civil proceedings simultaneously proceeded with by the parties to substantiate that a matter essentially of a civil nature has been given the cloak of a criminal offence. According to the learned counsel, the complaint is bereft of the necessary ingredients to constitute an offence punishable

under Section 420 of the Indian Penal Code. According to the learned counsel, even if the allegations in the complaint are accepted in its entirety based on settled precedents of the Apex Court and this Court, no offence under Section 420 is attracted. Reliance is also placed on the Apex Court decision in **V.Y.Jose and another Vs. State of Gujarat and another [(2009) 3 SCC 78]** to bring home the point that when criminal prosecutions are initiated as a shortcut for failing to proceed in a Civil Court for realization of money, jurisdiction of this Court under Section 482 can be exercised to quash the proceedings.

6. The learned counsel for the respondent No.2 has submitted that he has received instructions from the first respondent that the matter has been settled *inter se* between the parties and that they do not wish the criminal proceedings against the petitioners shall continue. No agreement or affidavit was filed to evidence the settlement.

7. I have gone through Annexure A - private complaint and also Annexure C - the agreement executed between the parties. The complaint does not contain any averment so as to infer that any fraudulent or dishonest inducement was made by

the petitioners pursuant to which the respondent parted with the money. It is not the case of the respondent that the petitioners are not the owners of the property or that the petitioners were not competent to enter into an agreement to sell or could not have transferred title in the property to the respondent. Merely because an agreement to sell was entered into, which agreement, the petitioners failed to honour, it cannot be said that the petitioners have cheated the respondent. No case for prosecution under Section 420 is made out even prima facie. (See **Murari Lal Gupta Vs. Gopi Singh [(2005) 13 SCC 699]**)

8. In my considered view, the allegations in the complaint does not disclose any criminal offence at all much less any offence either under Section 420. Permitting the case to languish before the trial court would only result in waste of precious judicial hours. To secure the ends of justice and to prevent abuse of process of law, it will only be just and expedient to quash the same by exercising the powers under Section 482 of Code of Criminal Procedure.

In the result, this Criminal Miscellaneous Case is allowed, and all further proceedings in Crime No.1186/2013 of Palakkad

Crl.M.C.No.4712 of 2013 : 5 :

Town South Police Station is hereby quashed.

Sd/-
RAJA VIJAYARAGHAVAN V,
JUDGE.

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[True copy]

P.A to Judge