

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

Crl.MC.No. 4877 of 2014 (E)

CC 298/2013 of C.J.M., THRISSUR

PETITIONERS/ACCUSED 2 AND 3 :-

- 1. ABIDA, AGED 28 YEARS,
W/O. SATHYAN, (R/O) KARUTHATTIL HOUSE,
3/639 THRISSUR CORPORATION, THRISSUR.**
- 2. MANI, AGED 68 YEARS,(R/O) KARUTHATTIL HOUSE,
3/639 THRISSUR CORPORATION,
THRISSUR.**

**BY ADVS.SRI.V.C.VALSAN
SRI.LINDONS C.DAVIS**

RESPONDENT/STATE/DEFACTO COMPLAINANT :-

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. SHYAMALA, "JYOTHIRMAYI", MANGALAM GARDENS, 1/50/1,
KIZHAKUMPATTUKARA DESOM, PERINGAVU VILLAGE,
THRISSUR - 680 008.**

**R1 BY SRI.JUSTIN JACOB, PUBLIC PROSECUTOR
R2 BY ADV. SRI.V.C.MADHAVANKUTTY**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 30-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

rkj

Crl.MC.No. 4877 of 2014 (E)

APPENDIX

PETITIONER(S)' ANNEXURES :-

ANNEXURE A- TRUE COPY OF THE AGREEMENT 09-11-2011.

ANNEXURE B- TRUE COPY OF SECOND AGREEMENT.

ANNEXURE C- TRUE COPY OF BILL SUBMITTED ON 10-12-2012.

ANNEXURE D- TRUE COPY OF UNDERTAKING DATED 10-12-2012.

ANNEXURE E- TRUE COPY OF MARRIAGE CERTIFICATE DATED 28-05-2012.

ANNEXURE F- CERTIFIED COPY OF FIR IN CRIME NO. 641/2013.

ANNEXURE G- CERTIFIED COPY OF CHARGE SHEET IN NO. 641/2013.

RESPONDENT(S)' ANNEXURES :- NIL

//TRUE COPY//

P.A. TO JUDGE

rkj

P.UBAID, J.

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Crl.M.C.No.4877 of 2014

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Dated this the 30th day of October, 2015

ORDER

The petitioners herein are the accused Nos.2 and 3 in C.C.No.298 of 2013 now pending before the Chief Judicial Magistrate's Court, Thrissur. They seek orders quashing the said prosecution involving the offence under Section 420 IPC. The dispute is concerning some transactions in connection with a construction contract. The defacto complainant alleges elements of cheating in the said transaction. Now, there is a report from the learned Chief Judicial Magistrate Court, Thrissur that the Court has already ordered further investigation in the matter under Section 173(8) Cr.P.C. The learned Chief Judicial Magistrate has also forwarded a copy of the said order passed under Section 173 (8) Cr.P.C. In such a situation, the final report initially submitted by the police under Section 173(2) Cr.P.C. cannot be examined now. This proceeding can be closed, without prejudice to the right of the petitioners to file appropriate application after the additional report of further investigation is filed by the police. On

a perusal of the order passed by the learned Magistrate, I find that such investigation was ordered by the learned Magistrate for the purpose of collecting necessary materials for a just decision. The learned Magistrate has also directed the police to investigate thoroughly, and find out whether the accused had the required intention to cheat at the very inception itself. This means that the materials now available are not sufficient for a successful prosecution under Section 420 IPC. The police is yet to make an effective investigation, and submit an additional final report in detail under Section 173(8) Cr.P.C. If the petitioners are aggrieved by such final report, they can very well pursue the appropriate remedy possible under the law.

In the result, this Crl.M.C. is disposed of, with observation that the petitioners can file appropriate application after the supplementary report after investigation is filed by the police in the case under Section 173(8) Cr.P.C.

Sd/-

**P.UBAID
JUDGE**

rkj

//TRUE COPY//

P.A. TO JUDGE