IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

Crl.MC.No. 5071 of 2013 ()

CMP 256/2013 of CHIEF JUDICIAL MAGISTRATE'S COURT, THALASSERY

CMP 2710/2013 of JUDICIAL FIRST CLASS MAGISTRATE'S COURT, THALASSERY

PETITIONER/CLAIM PETITIONER:

KEBY P. THOMAS, AGED 35 YEARS,
S/O. ABRAHAM THOMAS, MANAGER, CUSTOMER SERVICE CENTRE,
PACL LTD., OPP.NEW BUS STAND, KASARGOD

BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN

RESPONDENT/ STATE:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM - 682 031, (CRIME NO.445/CR/EOW-III 2011
CALICUT)

BY PUBLIC PROSECUTOR SMT.SAREENA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13-10-2015, ALONG WITH CRL.M.C.5072/2013 & CRL.M.C.5073/2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 5071 of 2013 ()

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE-I COPY OF THE ORDER DATED 12.04.2013 IN CMP NO.256/2013 IN CRIME NO.542/2011 PASSED BY THE CHIEF JUDICIAL MAGISTRATE, THALASSERY.

ANNEXURE-II COPY OF THE ORDER DATED 11.09.2013 OF JUDICIAL FIRST CLASS MAGISTRATE, THALASSERY, IN CMP NO.2710/2013.

ANNEXURE-III SERIES BANK STATEMENTS ISSUED BY STATE BANK OF INDIA, UNION BANK OF INDIA AND PUNJAB NATIONAL BANK.

RESPONDENT'S ANNEXURES:

NIL

// True Copy //

P.A. To Judge

DSV/17/10/15

[CR]

B.KEMAL PASHA, J.

==================================

Crl.M.C.Nos.5071, 5072 & 5073 of 2013

==================================

Dated this the 13th day of October, 2015

<u>O R D E R</u>

Condition No.1 imposed by the court below in Annexure-II common order passed in C.M.P.Nos.2710 of 2013, 2711 of 2013 and 12712 of 2013 in CBCID Cr.No.445/CR/EOW-III/2011 is under challenge.

2. The Branch Managers of a company named PACL Ltd. are the petitioners herein. The allegation against the petitioners is that they have amassed a total amount of ₹872 Crores from the public by offering an unworkable scheme of purchasing lands and developing lands for them. By making such an attractive offer, they have allegedly cheated and defrauded various members of the public.

3. It is also alleged that they have purchased some properties and allotted some plots out of it, to some of the customers, and repeatedly they allotted the very same plots to various other customers on different occasions. These are serious matters which are to be unearthed, if it is true.

4. The investigating officer by invoking the provisions under Section 102 Cr.P.C. read with Section 149 Cr.P.C. have taken steps for freezing the accounts being operated by these petitioners for and on behalf of the company at various banks. It is the said action, which are under challenge in these Crl.M.Ps.

5. The court below has dealt with the questions in detail. At the same time, it seems that the court below has not properly interpreted the definition of "money-lender" as contained in Section 2(7) of the Kerala Money Lenders Act, 1958 (hereinafter referred to 'the Act'). It defines "money-lender" as *"a person whose main or subsidiary occupation is the business of advancing and realising loans or acceptance of deposits in the*

course of such business and includes ....” The term used by the Legislature after the words “advancing and realising loans” is “*or*” and not *“and*”. Even when a person, whose main or subsidiary occupation is the business of advancing and realising loans or acceptance of deposits from the public, he can be categorized as a money-lender within the meaning of Section 2(7) of the Act.

6. One of the arguments put forwarded by the learned counsel for the petitioners is that the court below has found that Section 17 of the Act has no application. This Court has to differ with the said observations made by the court below. It is too premature on the part of the court below to conclude that the offence under Section 17 of the Act has no application in the present case.

7. According to the learned Public Prosecutor, the said company has no licence for money lending. Without a licence for money lending, if the company is engaged in accepting

deposits from the public, it is evident that in such case, the said company is engaged in the business of money lending without any licence. Of course, those matters are now left open to be decided by the court below. It was too premature on the part of the court below to observe that an offence under Section 17 of the Act cannot be attracted. It depends on evidence in the matter.

8. The court below is carried away in giving a blank chit to the petitioners in the matter. The impugned order causes prejudice to the investigating agency and it will impede the smooth investigation of the case. Let the matter be investigated properly. The petitioners are challenging condition No.1 imposed by the court below in Annexure-II common order. According to the learned counsel for the petitioners, only an amount of ₹3 Crores are in deposit in the banks and the petitioners are ready and willing to offer the said amount as security. In a case wherein an amount of ₹872 Crores have been allegedly

accepted as deposit, the amount of ₹3 Crores allegedly in deposit is a pittance. The investigating agency has to asses the actual amount collected by the petitioners and file a statement regarding the same before the court below. In such case, the court below shall impose such a condition, which is appropriate in the cases. Annexure-II order passed by the court below is devoid of merits and is only to be quashed, and I do so.

In the result, Annexure-II order passed by the court below stands quashed. The court below shall hear the matter afresh, on getting a further report as aforesaid from the investigating officer, and dispose of it in accordance with law.

Lastly, the learned counsel for the petitioners has requested that the petitioners may be permitted to operate the bank accounts now and otherwise, they will have to stop the business. After all, what is the business that is being carried on by the petitioners' at present? This Court cannot understand as to what is the business being conducted by them. According to the learned counsel for the petitioners, presently the company is not accepting any deposits or not accepting any amounts from the public. In such case, of course, they can sit idle, with folded hands, without doing anything in the matter. Let them wait for a fruitful investigation in the matter.

Sd/-

B.KEMAL PASHA
JUDGE

DSV/13/10/15

// True Copy //

P.A. To Judge