

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

Crl.MC.No. 5382 of 2014

C.C.NO.759 OF 2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, VARKALA

PETITIONER(S)/ACCUSED 1 TO 4 :

1. A.R.ANUB, AGED 36 YEARS,
S/O.RASHEED, RESHMI, GANDHIMUKKU JN.,
KAYALAVARAM, VARKALA.P.O., THIRUVANANTHAPURAM-695 141.
2. A.RASHEED, AGED 62 YEARS,
S/O.ABDUL SALAM, RESHMI, GANDHIMUKKU JN., KAYALVARAM,
VAKKOM.P.O., THIRUVANANTHAPURAM.
3. T. NELSON,
ADVOCATE, PALACE ROAD, THUCKALAY,
KANYAKUMARI DISTRICT, TAMIL NADU.
4. SATHYA JOSEPH,
NOTARY PUBLIC, THUCKALAY, KANAYAKUMARI DISTRICT.

BY ADV. SRI.R.ANILKUMAR

RESPONDENT(S)/COMPLAINANT :

1. MUHAMMED AMANULLA,
S/O. MUHAMMED MUSTHAFA ALAYIL VEEDU,
BUILDING NO. 406(OLD) WARD NO.8,
BUILDING NO. 302(NEW) NILAKKAMUKKU, KADAKKAVUR.P.O.,
CHIRAYINKEEZHU TALUK,
THIRUVANANTHAPURAM DISTRICT-696 308.
2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

R1 BY ADVS. SRI.M.BALAGOVINDAN

SRI.T.KANANDA PADMANABHAN

R2 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 16-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE A:** CMP NO. 4957/2012 IS CONVERTED AS C.C NO.759/2013 BEFORE THE JFMC, VARKALA DATED 21ST DAY OF SEPTEMBER, 2012.
- ANNEXURE B:** THE TRUE PHOTOCOPY OF THE LETTER DATED 20-10-2008 FORWARDED TO THE 1ST PETITIONER.
- ANNEXURE C:** THE TRUE PHOTOCOPY OF THE STATEMENTS INDIAN OVERSEAS BANK STATING THE CLOSING OF TRANSACTION AS ON 11-02-2013.
- ANNEXURE D:** THE TRUE PHOTOCOPY OF THE BANK HAD GIVEN A LETTER DATED 25.02.2015.

RESPONDENT(S)' ANNEXURES :

- ANNEXURE R1(A):** THE TRUE COPY OF POWER OF ATTORNEY FABRICATED BY THE 1ST AND 2ND PETITIONERS DATED 16.10.2008.
- ANNEXURE R1(B):** THE TRUE COPY OF THE DETAILS OF PASSPORT OF THE 1ST RESPONDENT.
- ANNEXURE R1(C):** THE TRUE COPY OF THE DETAILS OF PASSPORT OF THE WIFE OF THE 1ST RESPONDENT.

//TRUE COPY//

P.A.TO JUDGE.

Msd.

B.KEMAL PASHA, J.

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Crl.M.C. No.5382 of 2014

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Dated this the 16th day of December, 2015

ORDER

The 1st petitioner is the nephew of the complainant, who is the 1st respondent herein. The 2nd petitioner is the brother-in-law of the 1st petitioner. The petitioners are the accused in C.C.No.759 of 2013 of the Judicial First Class Magistrate's Court, Varkala, for the offences punishable under Sections 120B, 406, 420, 461, 465, 379, 380, 471 and 474 read with Section 34 of the Indian Penal Code.

2. According to the 1st petitioner, he is the Chairman and Managing Director of an Engineering College at Kadayam in

Tamil Nadu. According to the petitioners, the case before the court below is falsely foisted against them unnecessarily in connection with disputes relating to the admission of some students in NRI quota at the said Engineering College.

3. According to the learned counsel for the 1st respondent, the 1st respondent and his wife were abroad and their house at Vakkom was being made use of by the nephew of the 1st respondent, who is the 1st petitioner herein. He had taken away the entire sale deeds of the 1st respondent and his wife and by colluding with a Notary Public in Tamil Nadu, the petitioners created an irrevocable power of attorney. The signature of the 1st respondent was forged in it. By making use of that forged power of attorney, a loan running to 2 ½ Crores of rupees was obtained from the Indian Overseas Bank, Courtallam Branch, by mortgaging the properties of the 1st respondent through equitable mortgage by deposit of title deeds without the knowledge and consent of the 1st respondent.

4. Subsequently, the 1st respondent came to know about such a mortgage only when he got notice under the SARFAESI Act from the Bank. On enquiries, the aforesaid facts were revealed and thereby he filed the present private complaint, which has been taken cognizance of by the court below.

5. It seems that during the period in which the documents were deposited before the Indian Overseas Bank by the 1st petitioner and the loan was availed, the 1st respondent and his wife were remaining abroad, as is evident from the copies of their passports. When the proceedings were initiated against the petitioners, immediately the loan was closed on 11.02.2013. Still the 1st respondent did not get back his sale deeds, which are remaining in the custody of the Bank.

6. The learned counsel for 1st respondent has pointed out when there was an attempt from the part of the petitioners to take away the documents from the Bank, the 1st respondent has approached the court below seeking a search warrant under

Section 91 Cr.P.C. The court below has passed an order directing the Bank not to release the documents to anybody since the forged power of attorney is also present along with the other sale deeds.

7. On hearing the learned counsel for the petitioners and the learned counsel for the 1st respondent, I do not find any valid grounds to quash the complaint pending before the court below. The court below shall proceed with the complaint and expedite the proceedings. The Bank shall produce the entire documents produced by the accused before the bank and all other documents executed by them before the Bank in connection with the said loan transaction including the loan application, before the court below in the case. Only on getting those documents, the court below can proceed with the matter.

In the result, this Crl.M.C. stands dismissed. The Indian Overseas Bank, Courtallam Branch is directed to produce the entire documents produced by the accused before the bank and

all other documents executed by them before the Bank in connection with the said loan transaction including the loan application, before the Judicial First Class Magistrate's Court, Varkala expeditiously, at any rate, within a period of 15 (fifteen) days from the date of receipt of a copy of this order. Registry is directed to communicate the copy of this order to the Manager, Indian Overseas Bank, Courtallam Branch. The court below shall dispose of the case, quite untrammelled by any of the observations made by this Court in this order.

**Sd/-
B.KEMAL PASHA
JUDGE**

DSV/17/12/15

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P.A. To Judge