

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. 5675 of 2013 ()

**-----
CC. NO.395/2011 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I,
NEDUMANGAD.
-----**

PETITIONER(S):

**GOPAKUMAR,
DEPUTY SUPERINTENDENT OF POLICE, CBCID,
POLICE HEADQUARTERS, THIRUVANANTHAPURAM.**

BY ADV. SRI.BASANT BALAJI.

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM- 682 031.**
- 2. PREMADATHAN,
S/O.BALAKRISHNA PANICKER, SANTHI BHAVAN,
ANANDESWARAM, KOTTAKKAKAM MURI,
ARYANAD VILLAGE, PIN- 695 541.**

**R1 BY PUBLIC PROSECUTOR SMT.P. MAYA.
R2 BY ADVS. SRI.SASTHAMANGALAM S. AJITHKUMAR,
SRI.V.S.THOSHIN.**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 13-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:

- | | |
|--------------------|---|
| ANNEXURE 1. | COPY OF THE FIR IN CRIME NO.211/2007 PRIVATE COMPLAINT OF ARYANAD POLICE STATION. |
| ANNEXURE 2. | COPY OF THE COMPLAINT FILED BY THE DEFACTO COMPLAINANT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, NEDUMANGAD. |
| ANNEXURE 3. | COPY OF THE REFER CHARGE IN CRIME NO.211 OF 2007 OF ARYANAD POLICE STATION. |
| ANNEXURE 4. | COPY OF THE ORDER SHEET IN CC.395/2011 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, NEDUMANGAD. |

RESPONDENT'S ANNEXURES: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

rs.

B. KEMAL PASHA, J.

.....
CRL. M.C. No. 5675 of 2013
.....

Dated this the 13th day of October, 2015

ORDER

Petitioner is the first accused in C.C.No. 395/2011 of the Judicial First Class Magistrate's Court-I, Nedumangad. He is presently working as Deputy Superintendent of Police. During the period in question, he was working as the Circle Inspector of Police, Aryanad. Presently, cognizance has been taken in Annexure 2 private complaint filed by the 2nd respondent herein as complainant, for the offences punishable under Sections 324, 420, 465 and 468 read with Section 34 IPC. The 2nd respondent herein has alleged in the private complaint that he was having four cents of property and he had purchased the same from the 2nd accused for a total consideration of ₹6,000/- on 21.5.2007.

According to him, for snatching away his property the 2nd accused hatched a criminal conspiracy with the petitioner and made out a case that only a quarter cent of property belonged to the 2nd accused was sold to the complainant and the remaining property was fraudulently obtained by him from the 2nd accused. On a complaint from the 2nd accused, the complainant was called to the police station by the petitioner and he was allegedly threatened and intimidated and he was directed to execute a sale deed in respect of the four cents of property in favour of the 2nd accused. It is alleged that consequently the sale deed happened to be executed by him.

2. According to the petitioner, he was discharging his official duty in the matter. The 2nd accused had 4¼ cents of property, which is situated in front of the property of the complainant. There was a narrow pathway leading to the property of the complainant. The complainant wanted to purchase the said 4¼ cents of property of the 2nd accused

also. When a proposal was forwarded for the same, the 2nd accused was not willing. Finally, the complainant begged her to sell a strip of land lying adjacent to the pathway, having an extent of $\frac{1}{4}$ cent for widening the pathway. The 2nd accused agreed and the complainant got the sale deed executed from her. The sale deed was executed by the 2nd accused on the *bona fide* belief that it was relating to $\frac{1}{4}$ cent of property only.

3. Subsequently, when the 2nd accused attempted to pluck coconuts from her four cents of property, it was obstructed by the complainant by claiming that the property was purchased by him from her. The 2nd accused was taken aback and she complained the matter at the police station before the present petitioner. The petitioner called the complainant to the police station. He along with the Panchayat President and some others appeared at the Police Station, and in the presence of all, the complainant voluntarily agreed to re-convey the property in favour of the

2nd accused. Consequently, a sale deed was executed by the complainant in favour of the 2nd accused in respect of the 4 cents of property which was snatched away by him from her. Thereafter, just as an afterthought, the present complaint was filed alleging those offences.

4. On hearing either side, and on going through the matter, it is evident that the complaint as such is false. Unnecessarily, a police officer has been dragged into these allegations. It seems that the complainant wants to settle scores with the 2nd accused. In fact, it was the 2nd accused who was defrauded and cheated by the complainant. To take cognizance of such offences against the petitioner, sanction is required within the meaning of Section 197 Cr.P.C. No sanction has been obtained in the matter. The court below ought to have applied its mind in a matter like this and ought not to have taken cognizance of the offences, except with the sanction under Section 197 Cr.P.C. Matters being so, Annexure A2 complaint and all further proceedings in

C.C.No.395 of 2011 of the Judicial First Class Magistrate's Court-1, Nedumangad, are liable to be quashed.

In the result, this Crl.M.C. is allowed and Annexure A2 complaint and all further proceedings in C.C.No.395 of 2011 of the Judicial First Class Magistrate's Court-1, Nedumangad are hereby quashed.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge