

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

Crl.MC.No. 7482 of 2015 ()

CC 901/2014 of JUDICIAL FIRST CLASS MAGISTRATE COURT, CHANGANACHERRY

PETITIONER/ACCUSED :

**GOPAL NARAYANAN @ GOPAL N., AGED 24 YEARS,
S/O.NARAYANAN, LAKSHMI BHAVAN
KOTTAYAM EXPO.COM 44/168 CMT JUNCTION, KOTTAYAM
NATTAKAM, KOTTAYAM(DT) KERALA.**

BY ADV. SRI.M.J.POLLY

RESPONDENTS/STATE :

**1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.**

**2. SUB INSPECTOR OF POLICE
CHINGAVANAM POLICE STATION,
KOTTAYAM DISTRICT - 686014**

BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 09-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- ANNEXURE-A1:** COPY OF THE AGREEMENT BETWEEN PETITIONER AND
DEFACTO COMPLAINT ON 26/11/2013.
- ANNEXURE-A2:** COPY OF THE JUDGMENT FROM THE HON'BLE HIGH COURT
OF KERALA AS WP(C) NO.8560/2014.
- ANNEXURE-A3:** ORIGINAL CHARGE COPY OF THE JFCM COURT
CHANGANACHERY, CC NO.901/2014, & CIME NO.451/2014 OF
CHINGAVANAM POLICE STATION.
- ANNEXUE-A4:** COPY OF THE FIR & FI'S, C.C.NO.901/2014 IN CRIME
NO.451/2014 OF CHINGAVANAM POLICE STATION.
- ANNEXURE-A5:** COPY OF THE WITNESS LIST, CC NO.901/2014 IN CRIME
NO.451/2014 OF CHINGAVANAM POLICE STATION.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE

bp

B. KEMAL PASHA, J.

.....
Crl.M.C. No.7482 of 2015
.....

Dated this the 9th day of December, 2015

ORDER

Petitioner is the accused in Crime No.451/2014 of the Chingavanam Police Station, presently pending as C.C.No.901/2014 before the Judicial First Class Magistrate's Court-I, Changnachery, for the offences punishable under Sections 406 and 420 of the Indian Penal Code.

2. The allegation against the petitioner is that he had induced the defacto complainant to pay an amount of ₹ 2 lakhs, styling it as security for taking up the work of Data Entry. Thereafter, the petitioner has completed the entire work and he was entitled to get an amount of ₹3,64,000/- for the works done. Either that amount or the amount obtained

as security were not paid by the petitioner to the defacto complainant. An agreement was also entered into between the parties prior to the transaction.

3. The present case of the petitioner is that at the most it will be a breach of contract and nothing more. The further case of the petitioner is that the agreement contains an arbitration clause and in case of any dispute, the parties have to recourse to arbitration proceedings.

4. Presently, as things stand now, it cannot be said that the offence under Sections 406 and 420 IPC will not be attracted in the matter. It is the case of the defacto complainant that he was induced to part with a huge amount by way of security on the understanding that on the completion of the work, all the amounts would be paid. But, no amounts were paid. It is not the case of a mere breach of contract. At the same time, it seems that there was inducement from the part of the petitioner on the basis of a false representation. Whether there is agreement or not is

not a question to be decided at present. At present, there is nothing to show that criminal liability will not be attracted in the matter. Matters being so, this Crl.M.C. is devoid of merits and hence, it is dismissed.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge