

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

Crl.MC.No. 7419 of 2014

CC 1211/2012 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KOLLAM

PETITIONER(S)/1ST ACCUSED:

**B USHAKUMARI,
WIFE OF SUKUMARAN, AMEEN, KOLLAM COURT,
NOW L.D.CLERK, SUB COURT, KOLLAM,
'ASWATHI BHAVAN', KIZHIYAM, CHEMMAKKAD.P.O.,
PERINAD, KOLLAM DISTRICT.**

BY ADV. SRI.ALAN PAPALI

RESPONDENT(S)/STATE & COMPLAINANT:

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682 031.**
- 2. C.SANTHOSH KUMAR,
'LAKSHMI SADANAM', MULAMKADAKAM, KOLLAM-691 012.**

R1 BY PUBLIC PROSECUTOR SMT.MAYA

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 04-11-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' ANNEXURES

**ANNEXURE I- CERTIFIED COPY OF THE PRIVATE COMPLAINT DATED 04.04.2012
FILED BY THE 2ND RESPONDENT BEFORE THE JUDICIAL FIRST
CLASS MAGISTRATE COURT-II, KOLLAM.**

**ANNEXURE II- TRUE COPY OF THE EXECUTION OF THE PROCESS KACHIT BY THE
PETITIONER BY THE ORDER OF THE MUNSIF COURT, KOLLAM
DATED 15.02.2010.**

**ANNEXURE III- TRUE COPY OF THE FINAL DECREE IN I.A.NO.1399 OF 2006 IN
O.S.NO.773/2006 DATED 14.07.2008 OF THE PRINCIPAL MUNSIF
COURT, KOLLAM.**

**ANNEXURE IV- TRUE COPY OF THE ORDER NO.1-1-87436/12 & APPEAL NO.14/12
DATED 22.01.2013 OF THE HON'BLE HIGH COURT OF KERALA.**

RESPONDENT(S)' ANNEXURES

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

[CR]

B.KEMAL PASHA, J.

=====

Crl.M.C. No. 7419 of 2014

=====

Dated this the 4th day of November, 2015

ORDER

The petitioner is the 1st accused in C.C.No.1211 of 2012 of the Judicial First Class Magistrate's Court-II, Kollam, for the offences punishable under Sections 420 and 466 read with Section 34 IPC.

2. The petitioner was working as an Amin at the Musiff's Court, Kollam, who was entrusted with the delivery proceedings in the execution in O.S.No.773 of 1996, which was a partition suit. The allegation against the petitioner is that she had deliberately cheated the third defendant by delivering Item No.2

property having an extent of 1.26 cents to the plaintiff/deed holder instead of delivering it to the 3rd defendant. The 2nd respondent herein, who is the complainant, who purchased the property later from the 3rd defendant, has filed a private complaint before the court below alleging the aforesaid offences against the petitioner herein and the 2nd accused.

3. The complainant had preferred a complaint before the learned District Judge, Kollam. The learned District Judge, Kollam initiated disciplinary actions against the petitioner and imposed a punishment of withholding of two increments with cumulative effect. An appeal was filed against the said order, to the Administrative side of this Court. The Registrar (Subordinate Judiciary) of this Court considered the matter and allowed the appeal in part by ordering the withholding of three increments without cumulative effect. In Annexure-IV order passed by the Registrar (Subordinate Judiciary), it was clearly found that it was an error committed by the petitioner due to oversight and the

same was unintentional.

4. One of the offences alleged against the petitioner is one under Section 466 IPC. No doubt, the offence under Section 466 IPC is one coming under the definition of forgery under Section 463 IPC. In **Govind Mehta v. State of Bihar [(1971) 3 SCC 329]** followed by the decision of the three Judges Bench of the Honourable Supreme Court in **S.L.Goswami v. the High Court of Madhya Pradesh at Jabalpur [(1979) 1 SCC 373]**, it was held that the offence under Section 466 IPC is one falling within the description of the offence of forgery defined in Section 463 IPC and therefore, Section 195(1)(b)(ii) Cr.P.C. will take in the offence under Section 466 IPC also. Therefore, no court can take cognizance of the offence under Section 466 IPC except on the complaint in writing of that court or by such officer of the court as that court may authorise in writing in that behalf or of some other court to which that court is subordinate. Evidently, there is no such complaint in this case alleging an offence under

Section 466 IPC. Matters being so, the cognizance taken by the court below for the offence under Section 466 IPC is bad in law.

5. Regarding the offence under Section 420 IPC also, it seems that no such offence can be invited to the facts and circumstances of this case. The 3rd defendant in the suit has no complaint at all. The 2nd respondent herein, who is the complainant, has preferred a private complaint has no *locus standi* to step into the shoes of the 3rd defendant to forward such an allegation of cheating as against the petitioner herein. Over and above it, in the enquiry conducted, it has come out that such error crept in the delivery proceedings were unintentional and it was only a mere error on account of oversight. Matters being so, an offence under Section 420 IPC is also not sustainable in this case.

6. From all the above, it has come out that the continued proceedings against the petitioner in C.C.No.1211 of 2012 of the Judicial First Class Magistrate's Court-II, Kollam based on

Annexure-I private complaint are liable to be quashed.

In the result, this Crl.M.C. is allowed and the continued proceedings against the petitioner in C.C.No.1211 of 2012 of the Judicial First Class Magistrate's Court-II, Kollam based on Annexure-I private complaint are hereby quashed.

Sd/-

**B.KEMAL PASHA
JUDGE**

DSV/6/11/15

// True Copy //

P.A. To Judge