

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

Crl.Rev.Pet.No. 734 of 2015 ()

AGAINST THE ORDER IN CMP 6 OF 2015 IN CC 94/2013 of
J.M.F.C.,VADAKKANCHERRY DATED 04-06-2015
CRIME NO. 165/2012 OF CHELAKKARA POLICE STATION , TRISSUR

REVISION PETITIONER/ACCUSED:

PRINCE ABRAHAM, AGED 33 YEARS,
S/O.MATHEW ABRAHAM,
THEKKUMMOOTTIL HOUSE,
VALLAMKULAM DESOM,
IRAVIPERUR VILLAGE,
THIRUVALLA, PATHANAMTHITTA DISTRICT.

BY ADVS.SRI.C.A.CHACKO
SMT.C.M.CHARISMA

RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.ABHIJETT LESSLIE

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 17-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A1: TRUE COPY OF PRIVATE COMPLAINT FILED AGAINST THE PETITIONER

ANNEXURE A2: TRUE COPY OF FIR DATED 11/4/2012 IN CRIME NO.165/12 OF CHELAKKARA POLICE STATION

ANNEXURE A3: TRUE COPY OF CMP NO.6 OF 2015 FILED BY THE REVISION PETITIONER

RESPONDENTS EXHIBITS:

/TRUE COPY/

PS TO JUDGE

P.UBAID, J.
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**Crl.R.P No.734 of 2015**  
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Dated this the 17th June, 2015

ORDER

The revision petitioner herein is the accused in C.C 94 of 2013 of the Judicial First Class Magistrate's Court, Wadakkanchery. One Beepathu brought complaint against the revision petitioner before the trial court alleging the offences under Sections 420 and 406 of Indian Penal Code. The said complaint was forwarded for investigation to the Police by the learned Magistrate under Section 156(3) of the Code of Criminal Procedure. On 13.4.2010, Beepathu agreed to sell her property of one acre to the revision petitioner herein for a total consideration of ₹ 5,00,000/-. However, the consideration shown in the assignment deed executed later is ₹ 12,96,000/-. The grievance of Beepathu is that she has already received ₹ 5,00,00/- from the revision petitioner, but the balance amount of ₹ 7,96,000/- is yet to be paid by the purchaser. In spite of demands, the revision petitioner failed to make payment, and thus cheated her. It appears that the complaint was

mechanically forwarded for investigation without examining the nature of the transaction. Anyway, the Police conducted investigation and submitted final report.

2. Pending the prosecution, the revision petitioner filed application for discharge under Section 239 of the Code of Criminal Procedure as C.M.P. No.6 of 2015. On hearing both sides, the learned Magistrate dismissed the application on 4.6.2013. The said order is under challenge in this revision.

3. On hearing the learned counsel and on a perusal of the impugned order, I find that the request for discharge was not properly decided by the learned Magistrate. In the nature of the disposal, notice to the complainant is felt not necessary. However, the learned Public Prosecutor was heard. The case of the complainant legally and practically is that some amount is due from the revision petitioner as balance consideration, and in spite of repeated requests and demands, the revision petitioner failed to make payment. It requires to be examined thoroughly and legally whether such a transaction or liability will invite a prosecution under

Sections 406 or 420 I.P.C. It also requires to be examined legally whether the said transaction involves the essential elements of the offences alleged, or whether it is only a civil transaction. Anyway, those aspects will have to be considered in detail by the learned Magistrate. Without discussing the merits of the complaint, the learned Magistrate found otherwise that the complainant has materials to prove the oral agreement against the terms of the contract of sale (sale deed) as provided under the second proviso to Sec.92 of the Evidence Act. The assignment deed itself shows that the consideration is ₹ 12,96,000/-. The revision petitioner is a party to the assignment deed. He is bound by all the terms of the assignment deed including the statements regarding consideration. As regards consideration, the sale deed itself shows that it is ₹ 12,96,000/-. Anyway, it requires to be examined, whether any amount is due to the complainant from the accused. If at all any amount is due as part of sale consideration, the next question for consideration is whether the failure on the part of the accused to make payment of

the balance consideration will by itself involve the necessary elements of cheating or breach of trust. All these aspects will have to be considered by the learned Magistrate in detail in the particular facts and circumstances, where, as I already observed practically and legally the claim is one for balance consideration. Let the matter be properly and legally decided by the learned Magistrate. Thus, I find that the impugned order is liable to be set aside and the matter requires to be decided properly and legally.

In the result, this revision petition is allowed. The impugned order passed by the court below on 4.6.2015 in C.M.P. No.6 of 2015 in C.C No.94 of 2013 will stand set aside and the application for discharge will stand revived. The learned Magistrate is hereby directed to take decision afresh on the question of discharge on merits, as observed above.

**Sd/-
P.UBAID
JUDGE**

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/True copy/

P.S to Judge