

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

Crl.Rev.Pet.No. 2017 of 2014 ()

AGAINST THE JUDGMENT IN CMP 1034/2014 of J.M.F.C.-I
MUVATTUPUZHA DATED 26-08-2014

REVISION PETITIONER(S)/COMPLAINANT:

SHRIRAM TRANSPORT FINANCE CO.LTD.
2ND FLOOR, PULINATTU PROPERTIES, VELLOORKUNNAM
MUVATTUPUZHA REPRESENTED BY POWER OF ATTORNEY
HOLDER RAJU THOMAS, WORKING AS CONSULTANT LEGAL
MUVATTUPUZHA.

BY ADVS.SRI.JACOB SEBASTIAN
SMT.SHAMSEERA. C.ASHRAF

RESPONDENT(S)/STATE AND ACCUSED:

1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, PIN-682031.

2. AJITH K.PAVITHRAN
S/O.PAVITHRAN, KUMBANAL HOUSE, MUVATTUPUZHA
ERNAKULAM-686661.

3. AMBILY KURIAKOSE
W/O.KURIAKOSE, PARAKAPADAVIL HOUSE, OORAMANA
MARADY VILLAGE, MUVATTUPUZHA, ERNAKULAM-686730.

4. VALSA
W/O.MATHAI, PARAKAPADAVIL HOUSE, OORAMANA
MARADY VILLAGE, MUVATTUPUZHA, ERNAKULAM-686730.

BY PUBLIC PROSECUTOR SRI.V.S. SREEJITH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 19-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

B. SUDHEENDRA KUMAR, J.

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Dated this the 19th day of October, 2015

ORDER

The revision petitioner is the complainant in CMP No. 1034 of 2014 on the files of the Court of the Judicial Magistrate of First Class-I, Moovattupuzha, who in this Revision Petition challenges the order passed by the court below dismissing CMP No. 1034 of 2014.

2. Heard the learned counsel for the revision petitioner.

3. The revision petitioner filed a complaint before the court below alleging that the respondent Nos. 2 to 4 herein availed a loan of Rs. 6,05,160/- from the revision petitioner to purchase an Innova Car, agreeing to re-pay the said amount in installments. However, they re-paid only an amount of Rs. 94,310/-. The respondents had to pay the balance amount to the

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complainant/revision petitioner. The revision petitioner understands that the respondents had sold the vehicle to a 3rd party. In the said circumstances, the revision petitioner prayed for forwarding the said complaint to the police under Section 156 (3) Cr.P.C.

4. The court below, after perusing the complaint found that the complaint did not prima facie disclose the offence alleged. The offences alleged were the offences under Sections 420 and 406 read with Sec. 34 IPC. The sum and substance of the allegation is that the accused, who had availed the credit facility, committed breach of loan agreement with the revision petitioner after remitting a few instalments of the loan. There is also a vague allegation that the revision petitioner could understand that the vehicle had been alienated. To whom it was alienated or on what day it was alienated is not mentioned in the complaint. Eventhough it is stated in the complaint that the complainant got information

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regarding the alienation, the details of the information are not furnished in the complaint. Therefore, the information with regard to the alienation can only be a vague guess. There is no allegation that there was any intention at the inception of the transaction to cheat the complainant. The court below found that there was no entrustment of the property for the purpose of misappropriation. Since the court below found that there was no prima facie material disclosing the offence, the court below dismissed the complaint.

5. The learned counsel for the revision petitioner relied on the decision in **Biju Purushothaman v. State of Kerala [2008 (3) KHC 24]** and argued that the court should have rejected the complaint, rather than dismissing the complaint if the court had found that no offence was made out and in the said circumstances, the order impugned cannot be legal and correct. It is true that this Court in **Biju Purushothaman (supra)** held that if the complaint

on the face of it does not make out any offence at all, then the Magistrate may reject the complaint. In this case, instead of rejecting, the learned Magistrate dismissed the complaint. Eventhough, the learned Magistrate had used the word “dismissed”, the said dismissal can only be treated as rejection of the complaint as there can be only rejection of the complaint at the pre-cognizance stage. Therefore, merely because the learned Magistrate used the word “dismissed”, it cannot be said that the order impugned has to be set aside on that reason alone.

6. The sole prayer in the complaint was to forward the complaint to the police under Section 156 (3) of the Code for investigation and report. A three Judge Bench of the Apex Court in **Ramdev Food Products Pvt. Ltd. v. State of Gujrat (AIR 2015 SC 1742)** held thus:

“Thus, we answer the first question by holding that the direction under Section 156 (3) is to be issued,

only after application of mind by the Magistrate.

When the Magistrate does not take cognizance and does not find it necessary to postpone issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice, it is considered appropriate to straightway direct investigation, such a direction is issued”.

It is clear from the above decision that the Magistrates must apply the mind before giving a direction under Section 156 (3) of the Code, to the police for investigation. It is also necessary that before issuing direction under Section 156 (3) of the Code, the Court must be satisfied that a case is made out to proceed forthwith.

7. In this case, the court below correctly found that there was no prima facie material before the Court disclosing any offence. In the said circumstances, the court below rightly dismissed the complaint. Having gone through the relevant inputs, I find that the order of the court below dismissing the complaint does not suffer from any illegality, impropriety or incorrectness warranting interference by this Court.

In the result, this Revision Petition stands dismissed.

Sd/-B. SUDHEENDRA KUMAR,
JUDGE.

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P.S. To Judge