

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

OP(Crl.).No. 68 of 2015 (Q)

CMP NO.5894/2014 of JUDICIAL FIRST CLASS MAGISTRATE COURT-IV, KOZHIKODE

PETITIONER(S)

**DR.SUHANESH HARIDAS, AGED 48 YEARS,
S/O DR.M.HARIDAS, UPASANA ENGLISH CHURCH CROSS ROAD,
NADACKAVU, KOZHIKODE-673011.**

BY ADV. SRI.E.NARAYANAN

RESPONDENT(S):

- 1. C.C.ASHRAFF ALI, AGED 41 YEARS
S/O.C.C.MUHAMMAD, CHALIL CHALACKKANDI HOUSE,
IRUMBUZHI(P.O), MALAPPURAM DISTRICT.**
- 2. K.H.SHERIN, AGED 33 YEARS,
W/O.C.C.ASHRAF ALI, D/O.HYDROSE,
CHALIL CHALAKKANDI HOUSE, IRUMBUZHI(P.O),
MALAPPURAM DISTRICT.**
- 3. M/S.SEAGOT PROJECTS AND REALTORS PVT LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR C.C.ASHRAFF ALI.**
- 4. M/S SEAGOT PROJECTS AND REALTORS PVT.LTD,
REPRESENTED BY ITS MANAGING PARTNER, C.C.ASHRAFF ALI.**
- 5. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, KOCHI-31.**

R5 BY PUBLIC PROSECUTOR SMT.P.MAYA.

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 23-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1:- TRUE COPY OF THE COMPLAINT DATED 10-10-2014 ON THE FILE OF
THE JUDICIAL FIRST CLASS MAGISTRATE COURT-IV, KOZHIKODE
WHICH IS NUMBERED AS CMP NO.5894/2014.**

RESPONDENT(S)' EXHIBITS

NIL

//True Copy//

P.A. To Judge

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K. Ramakrishnan, J.

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Dated this, the 23rd day of March, 2015.

J U D G M E N T

This is an application filed by the petitioner - complainant seeking certain directions to be issued to Judicial First Class Magistrate Court- IV, Kozhikode in respect of C.M.P.No.5894/2014 pending before that court under Article 227 of the Constitution of India.

2. It is alleged in the petition that petitioner filed Annexure I complaint which was taken on file as C.M.P.No.5894/2014 alleging that respondents 1 to 4 have committed offence under Sections 420 and 406 of Indian Penal Code with a prayer to forward the complaint to the police for investigation under Section 156(3) of Code of Criminal Procedure. But, the court below had not taken any action on the said complaint. So, the petitioner has no other remedy except to approach this court seeking the following relief:

"To direct the Judicial First Class Magistrate Court -IV, Kozhikode to take further action on Annexure A1 complaint as per law."

3. Heard the Counsel for the petitioner and the Public Prosecutor and notice to other respondents dispensed with as this court felt that the petition can be disposed of without issuing notice to the respondents on the admission stage itself after getting a report from the court below regarding the present stage of the complaint. Accordingly, a report has been called for and the learned magistrate sent a report which reads as follows:

"In obedience to the official memorandum referred above, I may humbly submit that C.M.P.No.5894/2014 was filed by the complainant Dr.Suhanesh Haridas on 16.10.2014.

The complaint in brief is that the accused was in possession of 10 cents of land at Thariyod in Vythiri Taluk. They assured the complainant that they will construct a cottage/villa in the 10 cents of land along with 40 cottages to be constructed. After registration, complainant was assured to be given Rs.25,000/- monthly for the first five years and was assured to be given additional bonus of Rs.2,50,000/- in each year. Believing the same, complainant purchased 10 cents of land and signed in an agreement executed by the third accused as the M.D.of M/s. Seagot Projects and Realtors Pvt.Ltd. Complainant had handed over Rs.36,00,000/- to the accused and the property was registered in the name of complainant. The accused had started the construction of the cottage and had given Rs.25,000/- per month to the complainant, as agreed. But, the accused stopped the construction and stopped to pay the rent. On perusal of the documents, complainant found that the accused as the partners had assigned the land in the name of complainant. Accused had cheated the complainant. Hence complainant alleges that the accused had committed offences u/ss.420, 406 r/w 34 IPC.

The complaint was filed on 16.10.2014. The court had taken cognizance of the case and posted for sworn statement on 12.11.2014. On 12.11.2014, complainant was absent and filed an application which was allowed. The case was posted to 24.12.2014. On 24.12.2014, I was on leave and the case was

adjourned to 20.02.2015. On 20.02.2015, complainant was represented. Complainant was directed to be present for sworn statement as last chance on 30.03.20015. Now the case stands posted to 30.03.2015."

4. Counsel for the petitioner submitted that since there was no posting date given by the learned magistrate, that prompted the petitioner to file this petition.

5. Heard the Public Prosecutor also.

6. On going through the report of the magistrate, it is seen that, instead of forwarding complaint to the police for investigation under Section 156(3) of Code of Criminal Procedure, the magistrate has decided to conduct enquiry under Section 202 of Code of Criminal Procedure which cannot be said to be without jurisdiction. Further, it is seen from the report that the complaint was filed on 16.10.2014 and it was posted to 12.11.2014 for taking sworn statement. On that day, the complainant was absent and an application was filed to condone his absence and that was allowed. Thereafter, it was posted to 24.12.2014. On that day, since the magistrate was on leave, it was adjourned to 20.02.2015. On that day, the complainant was represented and he was directed to be present on 30.03.2015 for taking sworn statement as last chance. So, the allegation that no steps were taken by the

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magistrate on the complaint filed appears to be not correct. Since the magistrate has decided to conduct an enquiry under Section 202 of Code of Criminal Procedure and it was posted to 30.03.2015 for taking sworn statement of the complainant, this court feels that there is no further direction need be given in this petition and the report of the magistrate is recorded and the petition is closed with following directions:

Complainant is directed to appear before the court below on 30.03.2015 to give sworn statement and the learned magistrate is directed to expedite the enquiry under Section 202 of Code of Criminal Procedure in the complaint as expeditiously as possible.

Office is directed to communicate this order to the concerned court by fax immediately.

Sd/-
K.Ramakrishnan, Judge.

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[True copy]

P.A to Judge