

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

OP(Crl.).No. 244 of 2014 (Q)

CC 2823/2014 of JUDICIAL FIRST CLASS MAGISTRATE COURT, PARAPPANANGADI
=====

PETITIONERS/ACCUSED NO.2 TO 4:

- 1. K.SREEDHARAN NAIR, AGED 75 YEARS**
S/O.MADHAVAN NAMBIAR
FORMER PRESIDENT CHELEMBRA CO-OPERATIVE SOCIETY LTD.
RESIDING AT CHAITHANYA, KOLAKATTUCHALIL PO
MALAPPURAM DISTRICT
- 2. SITHARA, AGED 39 YEARS**
D/O.RAMADAS.P, SECRETARY
CHELEMBRA CO-OPERATIVE SOCIETY LTD
KOLAKATTUCHALIL PO, MALAPPURAM DISTRICT
- 3. MURALEEDHARAN.K.V., AGED 51 YEARS**
S/O.SANKUNNY NAIR, RESIDING AT SUSHAMALAYAM
THENHIPALAM PO, MALAPPURAM DISTRICT

BY ADVS.DR.K.P.SATHEESAN (SR.)
SRI.M.R.JAYAPRASAD
SRI.P.MOHANDAS (ERNAKULAM)
SRI.ANOOP.V.NAIR
SRI.S.VIBHEESHANAN
SRI.SIDDHARTH KRISHNAN

RESPONDENT/COMPLAINT:

V. USSAIN KOYA
S/O.KAMMUKUTTY, MELE KOLLERI HOUSE
CALICUT UNIVERSITY PO, CHENAKKAL
MALAPPURAM 673 635.

R1 BY ADV. SRI.K.K.MOHAMED RAVUF

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 18-02-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS

- EXHIBIT P1** COPY OF THE LETTER GIVEN BY THE ASSISTANT REGISTRAR (GENERAL) OF CO-OPERATIVE SOCIETIES, MANJERI DATED 8/2/2010
- EXHIBIT P2** COPY OF THE LETTER GIVEN BY THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETEIS DATED 27/2/2013
- EXHIBIT P3** COPY OF THE LETTER GIVEN BY THE CHELAMBRA CO-OPERATIVE URBAN SOCIETY TO THE RESPONDENT DATED 23/3/2013
- EXHIBIT P4** COPY OF THE LETTER WRITTEN BY THE CHELAMBRA CO-OPERATIVE URBAN SOCIETY TO THE JOINT REGISTRAR(GENERAL),MALAPPURAM DATED 25/5/2013
- EXHIBIT P5** COPY OF THE COMPLAINT FILED BY THE RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT-1 PARAPPANANGADI AS CMP NO.1628/2013
- EXHIBIT P6** PROCEEDINGS INCLUDING THE SWORN STATEMENT GIVEN BY THE RESPONDENT ON 25/10/2014 NOTED BY THE LAWYER AS INSTRUCTED BY THE PETITIONERS

RESPONDENT'S EXHIBITS

- EXT.R1** COPY OF THE RECEIPT ISSUED BY THE BANK DATED 21.10.2014
- EXT.R2** COPY OF THE RECEIPT DATED 19.05.2004 ISSUED BY THE BANK
- EXT.R3** COPY OF THE RECEIPT DATED 03.08.2005 ISSUED BY THE BANK
- EXT.R4** COPY OF THE LETTER NO.CRB 1072/13/LD IS DATED 07.03.2013 OF THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETEIS, MALAPPURAM
- EXT.R5** COPY OF THE LETTER DATED 10.04.2013 SENT BY THE RESPONDENT TO THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETEIS, MALAPPURAM
- EXT.R6** COPY OF THE LETTER DATED 04.06.2013 SENT BY THE RESPONDENT TO THE BANK
- EXT.R7** COPY OF THE RELEVANT EXTRACT OF THE ENQUIRY REPORT
- EXT.8** DETAILS OF TRUE COPIES OF LOAN ACCOUNT OF THE RESPONDENT AND LOAN ACCOUNT OF THE 3RD PETITIONER
- EXT.R9** COPY OF THE PLAINT IN O.S.NO.131/2013 OF THE MUNSIF COURT, PARAPPANANGADI
- EXT.R10** COPY OF THE PROTEST COMPLAINT FILED BY THE PETITIONER

// TRUE COPY // P.A. TO JUDGE

P. UBAID, J.

O.P.(Crl) No.244 of 2014

Dated this the 18th day of February, 2015

JUDGMENT

The petitioners herein are the accused Nos.2 to 4 in C.C.No.2823/2014 of the Judicial First Class Magistrate Court-I, Parappanangadi. The respondent herein is the complainant in that case. On his complaint a crime was registered by the police, but it was referred. Later, he made a complaint before the learned Magistrate directly, on which the learned Magistrate conducted enquiry as provided under the law, and took cognizance. On taking cognizance, the learned Magistrate issued notice to the 1st accused and ordered non-bailable warrant against the accused Nos. 2 to 4. The said prosecution is sought to be quashed by the accused Nos. 2 to 4, on the ground that necessary materials are not there for a prosecution against them under Sections 120(B) and 409 IPC. On hearing both sides and on a perusal of the materials, I find that cognizance was taken by the learned Magistrate after due enquiry under Sections 200 and 202 Cr.P.C. It appears that the real grievance of the petitioners

is that without any ground or justification, the court below has ordered warrant of arrest against them. On a perusal of the cognizance order made by the learned Magistrate, I find that the learned Magistrate has not stated any special reason for issuing warrant of arrest against the accused at the first instance. It is not known why such warrant of arrest was ordered by the learned Magistrate on taking cognizance. Of course, the prayer to quash the prosecution as such cannot be now entertained. The petitioners will have to appear before the learned Magistrate and face trial. If they are really confident that necessary materials are not there, for a prosecution under Sections 409 and 120(B) IPC, they can make an application for discharge under Section 245(2) Cr.P.C. If such a course is not possible, or if the court proceeds further, they will get another chance to make application for discharge under Section 245(2) Cr.P.C. after pre-charge evidence is recorded by the learned Magistrate. In this proceeding, I find it not proper to go to the merits and decide the request to quash the prosecution as such. Remedies are open to the petitioners during trial. However, the grievance of

the petitioners is really genuine that the learned Magistrate straight away issued warrant of arrest against them on taking cognizance. The petitioners can very well surrender before the learned Magistrate and make application for regular bail. I do not think that the learned Magistrate will mechanically remand them to judicial custody. The observations made by this Court earlier will have to be considered by the learned Magistrate in taking decision regarding bail. With the above observations this petition can be closed.

In the result, this O.P.(Crl) is closed with the above observations made by this Court.

Sd/-

P. UBAID, JUDGE

sd