IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 26TH DAY OF JULY 2024 / 4TH SRAVANA, 1946

CRL.MC NO. 1549 OF 2017

CRIME NO.1394/2008 OF North Paravur Police Station, Ernakulam

CC NO.10 OF 2016 OF JUDICIAL MAGISTRATE OF FIRST CLASS - I, NORTH PARAVUR

PETITIONER/4TH ACCUSED:

K.K.SUDHEER
AGED 42 YEARS, S/O.K.A.KUMARAN,
KOTTAPURAKKAL HOUSE, CHERAI (P.O),
ERNAKULAM DISTRICT, PIN 683 514.

BY ADVS.
SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P

RESPONDENTS/DEFACTO COMPLAINANT & STATE:

1 **DAISEY JOSE**
W/O.JOSE, KOORANVATATHARA HOUSE,
KATTATHURUTH ROAD, THURUTHIPPURAM KARA,
MOOTHAKUNNAM VILLAGE,
ERNAKULAM DISTRICT PIN 683 516.

2 **STATE OF KERALA**
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
KOCHI 682 031.

OTHER PRESENT:

SMT.NIMA JACOB, PP

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

Crl.M.C. No.1549 of 2017

Dated this the 26th day of July, 2024

ORDER

This criminal miscellaneous case is filed to quash the proceedings in C.C.No.10/2016 on the file of the Judicial First Class Magistrate Court-I, North Paravur, arising from Crime No.1394/2008 of North Paravur Police Station. The above case is charge-sheeted alleging offences punishable under Sections 120B, 406, 201 and 420 read with Section 34 of the Indian Penal Code.

2. The prosecution case is that, the accused, in furtherance of their common intention, collected subscription amount towards chits run by the firm from 10.12.2007 and closed the office of the establishment on 09.09.2008 without paying the chitty amount to the subscribers. Hence it is alleged that the accused committed the offence.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

4. There is no appearance for the 1st respondent. The counsel for the petitioner submitted that as per Annexure-III proceedings, the petitioner already retired from the partnership firm on 17.07.2007. The counsel for the petitioner further submitted that the admitted case of the prosecution is that the chitty amount is collected from 10.12.2007 onwards. The counsel also submitted that a similar case with same set of allegation is quashed by this court as per Annexure-VI order. Therefore the counsel submitted that the continuation of proceedings against the petitioner is an abuse of process of the court.

5. The Public Prosecutor submitted that the contentions raised by the petitioner are to be raised before the trial court at the appropriate stage and this Court may not interfere with the final report.

6. This Court considered the contentions of the petitioner and the Public Prosecutor. The admitted prosecution case is that the amount is collected by the collection agents from 10.12.2007. The petitioner is only one of the partners of the firm. The petitioner produce d Annexure-III which would show that the petitioner retired

from the partnership firm on 17.07.2007. If that is the case, the petitioner cannot be prosecuted for the allegation raised in the final report. Moreover, this Court in a similar situation quashed the proceedings against the petitioner himself in Crl.M.C.No.3997/2009. The relevant portion of the above judgment is extracted hereunder:

> "4. Annexure F final report shows that petitioner was implicated in the case as an accused on the ground that he is also one among the partners of the firm and the firm had conducted chitty and collected amount by way of subscriptions to the chitty and before paying amount, closed the chitty and thereby cheated the subscribers. Though the charge shows that the amount was collected from 7.2.2007 onwards till 8.7.2008, the very case is that the amount was collected by the firm and not by the original proprietory concern. Annexure A shows that the partnership firm was constituted only on 18.6.2007. When there is no allegation that petitioner made any inducement or representation to any subscriber to join the chitty transaction prior to the constitution of the firm by Annexure A, on 18.6.2007, petitioner cannot be prosecuted for any act done prior to the constitution of the firm. In fact there is no such case for the prosecution also. When the dishonest intention is alleged as

> against the petitioner, only after the constitution of the firm and Annexure B deed of retirement establishes that within one month of the constitution of the firm, the firm was reconstituted whereunder petitioner ceased to be a partner, continuation of the prosecution as against the petitioner is only an abuse of process of the court.
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> Petition is allowed. C.C.3648/2009 on the file of Judicial First Class Magistrate's Court as against the petitioner accused No.4 is quashed.

7. In the light of the above decision and also in the light of the facts and circumstances of the case, I think the proceedings against the petitioner need not be continued.

Therefore, this Criminal Miscellaneous Case is allowed. All further proceedings against the petitioner / 4th accused alone in C.C.No.10/2016 on the file of the Judicial First Class Magistrate Court-I, North Paravur, arising from Crime No.1394/2008 of North Paravur Police Station, are quashed.

sd/-
P.V.KUNHIKRISHNAN
JUDGE

JV

APPENDIX OF CRL.MC 1549/2017

PETITIONER ANNEXURES

ANNEXURE I	**CERTIFIED COPY OF THE FINAL REPORT DATED 7.5.2010**
ANNEXURE II	**TRUE COPY OF THE PARTNERSHIP DEED DATED 18.6.2007**
ANNEXURE III	**TRUE COPY OF FORM V, NOTICE OF CHANGE IN THE CONSTITUTION OF THE FIRM SUBMITTED BEFORE TEH REGISTRAR OF FIRMS ALONG WITH THE DEED EVIDENCING THE RECONSTITUTION OF THE FIRM DATED 17.7.2007**
ANNEXURE IV	**TRUE COPY OF THE NOTICE PUBLISHED IN MANGALAM DAILY DATED 23.8.2007**
ANNEXURE V	**TRUE COPY OF THE NOTICE PUBLISHED IN THE NEW INDIAN EXPRESS DAILY, COCHIN EDITION DATED 8.9.2007 ALONG WITH THE CERTIFICATE OF INSERTION DATED 1.7.2016**
ANNEXURE VI	**TRUE COPY OF THE ORDER PASSED BY THIS HON'BLE COURT IN CRL.M.C. NO. 3997/2009 DATED 20.1.2010**