IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 24TH DAY OF JULY 2024 / 2ND SRAVANA, 1946

CRL.MC NO. 5985 OF 2016

CRIME NO.251/2012 OF Medical College Police Station, Thiruvananthapuram

AGAINST THE ORDER/JUDGMENT DATED IN CC NO.711 OF 2012 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE, THIRUVANANTHAPURAM

PETITIONER/S:

1 **ABDUL GAFOOR**
RESIDING AT T.C.NO.VI/982, PADAYANI ROAD, MANJADIMOODU, VATTIYOORKKAVU, THIRUVANANTHAPURAM.

2 **DR.SHINU AZEEZ RAFEEKA**
W/O.DR.ABDUL GAFOOR, RESIDING AT T.C.NO.VI/982, PADAYANI ROAD, MANJADIMOODU, VATTIYOORKKAVU, THIRUVANANTHAPURAM.

3 **SHAJAHAN SHAJI**
S/O.ABDUL KAREEM, T.C.49/65-1 (PRA 352), KALIPPAMKULAM, PAYATTIKUPPA, MANAKKAD, THIRUVANANTHAPURAM.

4 **DR.VENUGOPALAN NAIR**
S/O.MADHAVAN PILLAI, T.C.2/1877, VBGRA 37, VEERA BHADRA GARDENS, PATTOM, THIRUVANANTHAPURAM.

5 **DR.BINOY STANLY**
S/O.STANLY SATHYANESAN, T.C.11/1907, AYANIMOOTTIL HOUSE, Y.M.R JUNCTION, NATHANCODE, THIRUVANANTHAPURAM.

BY ADVS.
SRI.R.V.SREEJITH
SMT.G.MAHESWARY

RESPONDENT/S:

1 **STATE OF KERALA**
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM 31.

2 **JOHN MATHAI**
AGED 53 YEARS, FLAT NO.7A2, TRADA SANJEEVANI APARTMENT, MEDICAL COLLEGE, THIRUVANANTHAPURAM 695 001.

BY ADVS.
SRI.UNNI SEBASTIAN KAPPEN

OTHER PRESENT:

SRI.RENJITH.T.R, SR.PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

Crl.M.C. No. 5985 of 2014

Dated this the 24th day of July, 2024

O R D E R

This Criminal Miscellaneous case is filed to quash the proceedings against the petitioners in CC No. 711/2012 on the file of the Judicial First Class Magistrate Court, Thiruvananthapuram. The petitioners are accused Nos. 1 to 5 in Crime No. 251/2012 of Medical College Police Station. The offence alleged against the petitioners are under Secs. 447, 427, 283, 406 r/w 34 IPC.

2. The prosecution case is that the accused Nos. 1 and 2, who are the owners of Flat 7B2 and 6A2 of TRIDA Sanjeevani Apartment, with an intention to proceed against the

contract and to cause financial loss by way of a construction, with accused Nos. 3 to 5 entered into the flat premises and had done the construction works. It is submitted that the accused had removed the electrical apparatus fixed there and had caused loss by destroying the marble and also caused obstruction by dumping the waste in a public way. Hence, it is alleged that the accused committed the offences. Annexure-I is the FIR in this case and Annexure-II is the final report. According to the petitioners, even if the entire allegations are accepted, no offence is made out. Hence, this Crl.M.C. is filed to quash the proceedings.

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

4. The learned counsel for the petitioners submitted that even if the entire allegations are accepted, only civil consequences are there and no criminal offence is made out. The counsel submitted that the defacto complainant had

already filed a civil suit in his capacity as Apartment Owners Association President seeking decree of injunction and consequential reliefs against the petitioners herein as OS No. 393/2012 before the Munsiff Court, Thiruvananthapuram as evident by Annexure-III. He had also filed another civil suit against the petitioners 1 and 2 seeking a decree of prohibitory injunction from running a dental clinic in the underground basement floor of the residential apartment, which was purchased by them originally as consultation rooms. Annexure-IV is the plaint in OS No. 1454/2014. The 2nd petitioner herein also filed a suit as OS No.241/2012 against the defacto complainant herein and the Apartment Owners Association. She claims in the suit that she is working abroad and had bought a flat in the basement floor having a built up area of 422.49 M^2 in the apartment constructed by TRIDA, which is named as Sanjeevani Apartments. She alleged that out of the total extent of 422.49 M^2, an extent of 242.28 M^2 of built up

area with consulting room Nos. C1 to C6 were purchased by her. The balance area of 180.20 M^2 of built up area with consulting room Nos. C7 to C11 were purchased by her husband. The said area is in the basement floor of the apartment and is inclusive of the consulting rooms with a corridor in the middle. It is the case of the petitioners that the entire basement floor except lift, garbage room, fire duct and stair case was purchased by the petitioners 1 and 2 and they are in absolute possession and enjoyment of that portion of the building. It is submitted that the area is now under the enjoyment of the 3rd petitioner. It is also submitted that the power of attorney holder of the petitioners 1 and 2 had filed OS No. 241/2012 and Annexure-V is the plaint. It is also submitted that the 4th petitioner herein, who was conducting a Dental Clinic in the premises had also filed OS No. 194/2015 against the defacto complainant and association seeking permanent prohibitory injunction. Annexure-VI is the plaint. According to

the petitioners, a perusal of Annexure-V and VI would reveal that the defacto complainant and his men are trying to trespass into the property owned by petitioner Nos. 1 and 2, in which the 3rd petitioner is a tenant. According to the petitioners, Annexure-I and II are only off shoots of the civil dispute and hence, the criminal miscellaneous case is an abuse of process of court. Therefore, it is submitted that Annexure-II final report may be quashed. The Public Prosecutor submitted that these are matters of evidence and this Court may not interfere with the matter under Sec. 482 Cr.P.C.

5. This Court considered the contentions of the petitioners and the Public Prosecutor. This Court also heard the 2nd respondent.

6. After going through the pleadings and the documents, it is clear that about four suits are filed between the parties and the question in the suits are about the ownership of the disputed portion, in which the alleged offence

happened. When the suits are pending, it cannot be said that there is any trespass and the offence as alleged by the defacto complainant committed by the petitioners. The petitioners says that the building portion in dispute is their property and on the other hand, the defacto complainant says that it is the property of the defacto complainant. These disputes can be resolved only through civil court. Admittedly, four suits are pending before this Court. The present prosecution, according to me, need not be continued and the matter is to be settled before the civil court. This Court in **Anilakumari v. State of Kerala** [2019 (2) KLT 1106] observed that if a civil remedy is available and is in fact adopted, there can be no hesitation to quash the criminal proceedings to prevent abuse of process of the court. It will be better to extract the relevant portion of the above judgment.

> 22. *"There is an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement of a dispute. Any effort to settle civil*

disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. Criminal proceedings are not a short cut of other remedies available in law. A complaint disclosing civil transactions may also have a criminal texture. But, it has to be seen whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is in fact adopted, there can be no hesitation to quash the criminal proceedings to prevent abuse of process of the Court. In the instant case, the continuation of the criminal proceedings against the petitioner would be an abuse of process of Court. The proceedings against her are liable to be quashed."

7. In the light of the above principle and in the light of the facts and circumstances of this case, I am of the considered opinion that the continuation of the prosecution against the petitioners is an abuse of process of the court. But, I make it clear that the petitioners and the defacto complainant can agitate their contentions before the appropriate civil court, in accordance with law and all their contentions regarding the ownership and possession are left open.

8. The upshot of the above discussion is that the criminal prosecution can be quashed.

9. Therefore, this Crl.M.C. is allowed.

All further proceedings against the petitioners in CC No. 711 of 2012 on the file of the Judicial First Class Magistrate Court, Thiruvananthapuram arising from Crime No. 251/2012 of Medical College Police Station are quashed.

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

SKS

APPENDIX OF CRL.MC 5985/2016

PETITIONER ANNEXURES

ANNEXURE I	**TRUE COPY OF THE FIR IN CRIME NO.251/2012 OF MEDICAL COLLEGE POLICE STATION**
ANNEXURE II	**TRUE COPY OF THE FINAL REPORT IN CRIME NO.251/2012 OF MEDICAL COLLEGE POLICE STATION**
ANNEXURE III	**TRUE COPY OF THE SUIT FOR INJUNCTION IN OS NO.393 OF 2012 BEFORE THE MUNSIFF'S COURT, THIRUVANANTHAPURAM**
ANNEXURE IV	**TRUE COPY OF THE SUIT IN OS NO.1454 OF 2014**
ANNEXURE V	**TRUE COPY OF THE SUIT IN OS NO.241 OF 2012 PEINDING BEFORE THE MUNSIFF COURT, THIRUVANANTHAPURAM**
ANNEXURE VI	**TRUE COPY OF THE SUIT IN OS NO.194 OF 2015 BEFORE THE HONOURABLE MUNSIFF COURT, THIRUVANANTHAPURAM**