IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 2ND DAY OF AUGUST 2024 / 11TH SRAVANA, 1946

CRL.MC NO. 5905 OF 2019

CRIME NO.170/2017 OF Kanjikuzhy Police Station, Idukki

AGAINST THE ORDER/JUDGMENT DATED IN CC NO.322 OF 2018 OF JUDICIAL MAGISTRATE OF FIRST CLASS - I, IDUKKI

PETITIONER/S:

CELIN MATHEW
AGED 64 YEARS
W/O.LATE MATHEW.C.V., CHANDRANKUNNEL HOUSE,
THALLAKKANAM, KANJIKUZHY VILLAGE, IDUKKI DISTRICT.

BY ADVS.
A.C.DEVY
SRI.P.M.KURIAN
SRI.A.M.ABDULLA

RESPONDENT/S:

1 **CHINNAMMA PAUL**
AGED 69 YEARS
KALLUNKAL HOUSE, THALLAKKANAM, KANJIKUZHI VILLAGE,
IDUKKI DISTRICT-685 606.

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

BY ADV SRI.A.RAJASIMHAN

OTHER PRESENT:

SRI.RENJITH.T.R, SR.PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02.08.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

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Crl.M.C. No. 5905 of 2019

Dated this the 2nd day of August, 2024

O R D E R

This Criminal Miscellaneous case is filed to quash the proceedings in CC No. 322/2018 on the file of the Judicial First Class Magistrate Court, Idukki which arose from Crime No. 170/2017 of Kanjikuzhy Police Station. The above case is chargesheeted alleging offences punishable under Sec. 193, 406, and 420 IPC.

2. The crime was registered on the basis of a private complaint filed before the Judicial First Class Magistrate Court, Idukki , which was forwarded under Sec.156 (3) Cr.P.C. The allegation of the prosecution is that the defacto complainant and husband of the petitioner entered into an agreement of sale for an extent of 12 cents of landed property in old Sy.No. 161/1 of Kanjikuzhy Village of Idukki District on 29.09.1999. The further

allegation is that the registration was not done in the stipulated time and in the meanwhile, the husband of the petitioner died on 10.11.2003. After the demise of the husband of the petitioner on 08.01.2017, the petitioner executed the sale deed in the year 2017 to a third person. Accordingly, the prosecution alleged that the petitioner had cheated the defacto complainant. Based on the complaint received from the court, Annexure-A FIR was registered by the Kanjikuzhy police. Annexure-B is the final report filed by the police. Aggrieved by the same, this Crl.M.C is filed.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor. I also heard the learned counsel appearing for the 1st respondent.

4. The short point raised by the petitioner is that even if the entire allegations in Annexure-B are accepted, no offence is made out. The counsel for the 1st respondent submitted that the ingredients of the offence of cheating is there and this Court may not interfere with the prosecution at this stage. The

allegation in Annexure-B final report is extracted hereunder :

> *"1-ആം സാക്ഷിയും പ്രതിയുടെ ഭർത്താവ് മാത്യുവും തമ്മിൽ 1999-ൽ ഉണ്ടായിരുന്ന കരാർ പ്രകാരം 1-ആം സാക്ഷിയിൽ നിന്നും ടി മാത്യു 2 ലക്ഷം രൂപ അഡ്വാൻസ് കൈപ്പറ്റിയിട്ടുള്ളതും ഭർത്താവിന്റെ മരണശേഷം പ്രതിക്ക് അവകാശമായി ലഭിച്ചിട്ടുള്ളതും തൊടുപുഴ താലൂക്ക് ലീഗൽ സർവ്വീസ് അതോറിറ്റി അദാലത്ത് പെറ്റീഷൻ കേസ് നമ്പർ 346/02-ആം നമ്പറായി ആവലാതിക്കാരിയും 1-ആം സാക്ഷിയുമായ ചിന്നമ്മ പോളിന്റെ പേർക്ക് എഴുതി കൊടുക്കാൻ വിധിച്ചിട്ടുള്ളതും കഞ്ഞിക്കുഴി വില്ലേജ് കഞ്ഞിക്കുഴി കരയിൽ തള്ളക്കാനം ഭാഗത്ത് ബ്ലോക്ക് നമ്പർ 48-ൽ റീസർവേ നമ്പർ 6/8 സർവ്വേ നമ്പർ 161/1 പ്രകാരമുള്ള 4 ആർ 80 ചതുരശ്ര മീറ്റർ വസ്തു പ്രതി 1-ആം സാക്ഷിക്ക് എഴുതി കൊടുക്കാതെ 1-ആം സാക്ഷിയുടെ മകനായ 2-ആം സാക്ഷിയുടെയും 2-ആം സാക്ഷിയുടെ ഭാര്യയുടെയും പേർക്ക് തോപ്രാംകുടി സബ് രജിസ്ട്രാർ ഓഫീസ് ആധാരം നമ്പർ 425/2017 പ്രകാരം തീറാധാരം നടത്തികൊടുത്ത് പ്രതി 1-ആം സാക്ഷിയെ വിശ്വാസവഞ്ചന നടത്തി ചതിചെയ്ത് ഇന്ത്യൻ ശിക്ഷാനിയമം 193, 406, 420 IPC പ്രകാരം ശിക്ഷാർഹമായ കുറ്റം ചെയ്ത് എന്നുള്ളത്."*

5. It is an admitted fact that there is no agreement executed between the petitioner and the defacto complainant. Admittedly, the agreement is between the husband of the petitioner and the defacto complainant. Admittedly, when there is no agreement executed between the petitioner and the defacto complainant and if the petitioner transferred the property to the charge witness No.2, who is the son of the charge witness No.1, I think the offence under Secs. 406 and 420 IPC is not made out. The counsel appearing for the 1st

respondent takes me through Annexure-F, Lok Adalath award, in which there is an agreement that the respondent in that case will execute the sale deed in favour of the defacto complainant. But, admittedly, the petitioner is not a party in Annexure-F. In such circumstances, the same is not binding to the petitioner.

6. Therefore, I am of the considered opinion that even if the petitioner is directed to face trial, no purpose will be served because the offences alleged are not attracted. In such circumstances, the continuation of the prosecution against the petitioner is an abuse of process of court.

Therefore, this Crl.M.C. is allowed. All further proceedings against the petitioner in CC No. 322/2018 on the file of the Judicial First Class Magistrate Court, Idukki arising from Crime No. 170/2017 of Kanjikuzhy Police Station are quashed.

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

SKS

APPENDIX OF CRL.MC 5905/2019

PETITIONER ANNEXURES

ANNEXURE A	**THE TRUE COPY (ACCUSED COPY) OF THE FIR NO.170/2017 REGISTERED BY THE KANJIKUZHY POLICE STATION, IDUKKI DATED 27.03.2017.**
ANNEXURE B	**THE TRUE COPY (ACCUSED COPY) OF THE CHARGE SHEET DATED 27.03.2017 SUBMITTED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, IDUKKI.**
ANNEXURE C	**A TRUE PHOTOCOPY OF THE AGREEMENT DATED 22/08.1999.**
ANNEXURE D	**A TRUE PHOTOCOPY OF THE INJUNCTION ORDER ISSUED BY THE MUNSIFF COURT, IDUKKI BEARING OS NO.56/2000 DATED 04.04.2000.**
ANNEXURE E	**A TRUE PHOTOCOPY OF THE ORDER ISSUED BY THE SUB COURT, KATTAPPANA BEARING OS NO.57/2001 DATED 28.05.2002.**
ANNEXURE F	**A TRUE COPY OF THE AWARD ISSUED BY THE LOK ADALATH, THOUDPUZHA DATED 10.08.2001.**
ANNEXURE G	**A PHOTOCOPY OF AGREEMENT DATED 01.03.2017.**
ANNEXURE H	**A PHOTOCOPY OF THE SALE DEED NO.425/2017 DATED 08.03.2017.**
ANNEXURE I	**A TRUE COPY OF THE ORDER ISSUED BY SESSIONS COURT, THODUPUZHA BEARING CRL.MC NO.805/2017.**
ANNEXURE J	**A TRUE PHOTOCOPY OF THE STATEMENT GIVEN BY THE SON OF DEFACTO COMPLAINANAT VIZ BIJU PAUL BEFORE POLICE.**