2024:KER:59106

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 30TH DAY OF JULY 2024 / 8TH SRAVANA, 1946

CRL.MC NO. 8102 OF 2023

CRIME NO.400/2022 OF KALADY POLICE STATION, ERNAKULAM

AGAINST THE ORDER IN CC NO.264 OF 2023 OF JUDICIAL MAGISTRATE OF FIRST CLASS - IV, PERUMBAVOOR

PETITIONER/3RD ACCUSED:

MATHEW K. S.
AGED 61 YEARS
S/O. K.M. SEBASTIAN, KODIYAN HOUSE,
CHENDAMANGALAM P.O, ERNAKULAM DISTRICT,
KERALA, PIN – 683512.

BY ADVS.
M.R.DHANIL
JISHY P.S.
SENITTA P. JOJO

RESPONDENTS:

1 **THE STATE OF KERALA**
REPRESENTED BY THE STATION HOUSE OFFICER, KALADY POLICE STATION THROUGH ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM DISTRICT, KERALA, PIN – 682031.

2 **RENJINI V R**
D/O. RAJAPPAN NAIR, NAIR AMBALAM,
ERNAKULAM RURAL, KERALA. PRESENTLY WORKING AS THE ASSISTANT VICE PRESIDENT, FEDERAL BANK, ALUVA,
ERNAKULAM DISTRICT, KERALA, PIN – 683101.

BY ADV
SRI.LEO GEORGE
SRI. ASHI M.C (PP)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30.07.2024, ALONG WITH Crl.MC.6910/2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 30TH DAY OF JULY 2024 / 8TH SRAVANA, 1946

CRL.MC NO. 6910 OF 2023

CRIME NO.400/2022 OF Kalady Police Station, Ernakulam

AGAINST THE ORDER IN CC NO.264 OF 2023 OF JUDICIAL MAGISTRATE OF FIRST CLASS - IV, PERUMBAVOOR

PETITIONER/2ND ACCUSED:

PHILOMINA
AGED 65 YEARS
W/O ANTONY VJ (LATE), VELLATTUKUDY HOUSE, KIZHAKKUMPURAM, VADAKKUMBAGAM KARA MANJAPRA VILLAGE, ERNAKULAM DISTRICT, PIN – 683581.

BY ADVS.
M.R.DHANIL
JISHY P.S.
SENITTA P. JOJO
SANGEERTHANA M.

RESPONDENT/STATE AND DEFACTO COMPLAINANT:

1 **STATE OF KERALA**
REPRESENTED BY THE STATION HOUSE OFFICER, KALADY POLICE STATION THROUGH ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN – 682031.

2 **RENJINI V R**
D/O. RAJAPPAN NAIR, NAIR AMBALAM, ERNAKULAM RURAL, KERALA. PRESENTLY WORKING AS THE ASSISTANT VICE PRESIDENT, FEDERAL BANK, ALUVA, ERNAKULAM DISTRICT, KERALA, PIN – 683101.

BY ADV
SRI LEO GEORGE
SRI NIMA JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30.07.2024, ALONG WITH CRL.MC.8102/2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

CRL.M.C.No.6910 of 2023 & CRL.M.C.No.8102 of 2023

Dated this the 30th day of July, 2024

ORDER

Petitioner in Crl.M.C No.6910 of 2023 is the second accused while the petitioner in Crl.M.C No.8102 of 2023 is the third accused in CC No.264/2023 on the files of Judicial First Class Magistrate Court-IV, Perumbavoor arising out of Crime No.400/2022 of Kalady Police Station. Petitioners challenge the FIR and the Final Report filed in the above case in this petition under Section 482 of Cr.P.C.

2. The prosecution alleges that the accused had availed a loan in the year 2009, fraudulently and dishonestly portraying the first accused to be the owner of a property, which was, in 2007 itself, sold to the third accused, much prior to the application for loan. Subsequently, when default occurred in repayment, proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

were initiated. It was thereafter realized that the third accused had purchased the property and later returned the original of the prior title deed of 2006 to the first and second accused who utilized that document for creating the mortgage for in 2009 availing the loan and the accused there by committed the offence under Section 420 r/w section 34 of the IPC.

3. Sri. M.R. Dhanil, the learned counsel for the petitioner contended that the prosecution allegations are totally false and the second and third accused are totally innocent. According to the learned counsel, even if the entire allegations of the defacto complainant are admitted, still no offence can be made out against the second and third accused. The learned counsel, submitted that the uncontroverted allegations can, at the most, point only to the guilt of the first accused and therefore since the petitioners are innocent, the proceedings against them ought to be quashed.

4. Sri. Leo George, the learned counsel for the second respondent on the other hand contended that the involvement of the second and third accused is evident from the signature in the sale deed of 2007 and the return of the original of the prior title deed of the first accused and used for creating the mortgage. It is

contended that all those acts were done with the intention of defrauding the bank. According to the learned counsel, the contentions raised by the petitioners are matters for trial and therefore jurisdiction under Section 482 ought not to be involved.

5. Concededly, the first accused is no more. The prosecution allegations indicate the creation of a mortgage by the first and second accused in 2009 utilizing a prior sale deed of 2006, knowing that the said property was sold to the third accused in 2007. The allegations indicate factual disputes which cannot be considered in a proceeding under Section 482 Cr.P.C. Apparently there are no allegations of malafides against the defacto complainant.

6. In the decision in **State of Uttar Pradesh v. O.P. Sharma (1996) 7 SCC 705** the Supreme Court had observed that the courts should be circumspect and loath to interfere under Section 482 Cr.P.C. especially when factual disputes arise. Sifting through the materials to arrive at a conclusion regarding the guilt of an accused is not the purport and scope of Section 482 of Cr.PC.

7. Further, in the decision in **Mahendra K.C. v. State of Karnataka and Ors., (2022) 2 SCC 129,** and in **Rashmi**

Kumar v. Mahesh Kumar Bhada (1997) 2 SCC 397, it has been observed that the power under Section 482 Cr.P.C should be exercised sparingly and cautiously and only when the court is of the opinion that gross miscarriage of justice will occasion if it is not invoked. The Supreme Court has also cautioned that the High Courts should not embark upon an enquiry on the reliability or genuineness of the allegations in the Final Report and a finding on the veracity of the material relied on by the prosecution is not a consideration at the stage of exercising the power under Section 482 Cr.P.C. The recent decision in **A. M. Mohan v. The State, represented by SHO and Another (2024 INSC 233)** is also relevant in this context.

7. In view of the above circumstances, I find no merit in these petitions. Needless to mention, the learned Magistrate shall dispose of the case, untrammelled by any of the observations made in this judgment.

This Crl.M.C. is dismissed.

Sd/-
BECHU KURIAN THOMAS
JUDGE

HKH/30.07.2024

APPENDIX OF CRL.MC 6910/2023

PETITIONER ANNEXURES

ANNEXURE A1	**TRUE COPY OF THE F.I.R NO. 400/2022 OF KALADY POLICE STATION, DATED 13/04/2022**
ANNEXURE A2	**TRUE COPY OF THE FINAL REPORT DATED 25/04/2022 OF KALADY POLICE STATION**

APPENDIX OF CRL.MC 8102/2023

PETITIONER ANNEXURES

ANNEXURE 1	**TRUE COPY OF THE F.I.R NO. 400/2022 OF KALADY POLICE STATION, DATED 13/04/2022**
ANNEXURE 2	**TRUE COPY OF THE FINAL REPORT DATED 25/04/2023 OF KALADY POLICE STATION**