



2025:KER:29244

Crl.M.C.No.2910/2020

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

MONDAY, THE 7TH DAY OF APRIL 2025 / 17TH CHAITHRA, 1947

CRL.MC NO. 2910 OF 2020

AGAINST THE ORDER DATED 29.02.2020 IN CRRP NO.31 OF 2019 OF
III ADDITIONAL SESSIONS COURT, THRISSUR

AGAINST THE ORDER DATED 03.06.2019 IN CRL.M.P.NO.5071 OF 2017
IN CC NO.68 OF 2017 OF THE CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR

PETITIONERS/REVISION PETITIONERS/ACCUSED NOS.1 TO 8:

- 1 NAVODAYA KURIES LTD
NEAR AMBAKKADAN JUNCTION, THRISSUR CORPORATION, THRISSUR
TALUK, THRISSUR DISTRICT, REPRESENTED BY ITS CHAIRMAN AND
MANAGING DIRECTOR, JOSE K. FRANCIS, AGED 59, S/O. FRANCIS,
KUTTIKADAN HOUSE, ARISTO ROAD, FATHIMA NAGAR, THRISSUR
DISTRICT - 680 005.
- 2 JOSE K. FRANCIS
AGED 59 YEARS
S/O. FRANCIS, KUTTIKADAN HOUSE, ARISTO ROAD, FATHIMA NAGAR,
THRISSUR DISTRICT - 680 005.
- 3 THOMAS K. DAVIS
AGED 55 YEARS
S/O. DAVIS, KALLOKARAN HOUSE, LITTLE FLOWER ROAD, NEAR
AMBAKKADAN JUNCTION, THRISSUR, DIRECTOR, NAVODAYA KURIES
LTD., NEAR AMBAKKADAN JUNCTION, THRISSUR CORPORATION,
THRISSUR TALUK, THRISSUR DISTRICT - 680 022.
- 4 N. I. KUNJUPAVVU
AGED 55 YEARS
S/O. EYAPPAN, N I NELLISSERRY HOUSE, ARANATTUKARA DESOM,
DIRECTOR, NAVODAYA KURIES LTD., NEAR AMBAKKADAN JUNCTION,
THRISSUR CORPORATION, THRISSUR TALUK, THRISSUR DISTRICT -
680 022.
- 5 ANTO APPADAN
AGED 61 YEARS
S/O. ENASU, DIRECTOR, NAVODAYA KURIES LTD., NEAR AMBAKKADAN
JUNCTION, THRISSUR CORPORATION, THRISSUR TALUK, THRISSUR
DISTRICT - 680 022.



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- 6 SIMON K. FRANCIS
 AGED 55 YEARS
 S/O. FRANCIS, KUTTIKADAN HOUSE, EAST FORT, THRISSUR,
 DIRECTOR, NAVODAYA KURIES LTD., NEAR AMBAKKADAN JUNCTION,
 THRISSUR CORPORATION, THRISSUR TALUK, THRISSUR DISTRICT -
 680 022.
- 7 SALINI SHIJU
 AGED 37 YEARS
 W/O. OFFICE STAFF, NAVODAYA KURIES LTD., NEAR AMBAKKADAN
 JUNCTION, THRISSUR CORPORATION, THRISSUR TALUK, THRISSUR
 DISTRICT - 680 022.
- 8 SUNNY PAUL
 AGED 45 YEARS
 S/O. PAUL, CHIRAKKAL HOUSE, PONGANAM KADU, THRISSUR DISTRICT
 - 680 020.

BY ADV G.SREEKUMAR (CHELUR)

RESPONDENTS/RESPONDENTS/RESPONDENTS/STATE OF KERALA AND THE
COMPLAINANT:

- 1 THE STATE OF KERALA
 THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA AT
 ERNAKULAM, PIN - 682 031.
- 2 AJITH ANTO
 AGED 33 YEARS
 S/O. ANTO, ARAKKAL HOUSE, NO. 1A, FIRST FLOOR, PARK LAND
 APARTMENTS, AMBAKKADAN JUNCTION, CHEMBUKAVU, THRISSUR
 DISTRICT - 680 020.

BY ADVS.
SRI.N.M.MADHU
SRI.P.P.HARRIS
SRI.SANGEETHARAJ.N.R, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
02.04.2025, THE COURT ON 07.04.2025 PASSED THE FOLLOWING:

**ORDER**

Accused Nos.1 to 8 in C.C.No.68/2017 on the files of the Chief Judicial Magistrate Court, Thrissur, have filed this petition under Section 482 *Cr.P.C.*, challenging the order of dismissal of Crl.R.P.No.31/2019 by the Additional Sessions Court-III, Thrissur. The aforesaid criminal revision petition was filed by the petitioners against the order passed by the learned Chief Judicial Magistrate, Thrissur, on 03.06.2019 in C.M.P.No.5071/2017 declining the request of the petitioners to discharge them under Section 245(2) Cr.PC.

2. The allegation against the petitioners is that they committed the offences punishable under Sections 406, 420, 465, 468 471 & 120B I.P.C read with Section 34 IPC. The allegation against the petitioners is that the company which the petitioners represent had agreed to buy back 150 shares held by the complainant and to pay Rs.3,00,000/- to him as per the undertaking of the second petitioner. It is stated that blank share transfer forms, along with share certificates, were handed over to the second petitioner as requested by him. The petitioners allegedly forged blank share transfer forms so obtained from the complainant/second respondent. It is stated that the seventh petitioner



transferred the shares of the complainant/second respondent in favour of the the eighth petitioner as per the directions of the petitioners 2 to 6.

3. The Police, after investigation, filed a refer-report in the case as one of 'civil nature'. The protest complaint filed by the second respondent against the above refer report, was taken into files as C.C.No.68/2017 by the learned Chief Judicial Magistrate after the completion of the necessary enquiry under Section 202 Cr.PC. Thereupon, the petitioners filed C.M.P.No.5071/2017 for discharge under Section 245(2) Cr.PC. The learned Magistrate, after hearing both sides, held that there is no reason to find the charge against the petitioners as groundless, and hence, declined to allow the prayer of the petitioners to discharge them. The learned Additional Sessions Judge-III, Thrissur, concurred with the findings of the learned Chief Judicial Magistrate and declined to interfere with the order passed by the learned Chief Judicial Magistrate, dismissing C.M.P.No.5071/2017 filed by the petitioners. It is the above order of the learned Additional Sessions Judge-III, Thrissur, which is under challenge in the present petition filed by the petitioners under Section 482 Cr.PC. According to



the petitioners, the courts below failed to analyse the protest complaint as an objection to the refer report, and instead, were swayed away by the merits of the inquiry under Section 202 Cr.PC. conducted on the protest complaint.

4. Heard the learned counsel for the petitioners, the learned counsel for the second respondent/de facto complainant and the learned Public Prosecutor representing the State of Kerala.

5. After referring to Section 245 Cr.PC, the learned Additional Sessions Judge held in the impugned order, that the discharge as envisaged under Sub-Section (2) of Section 245 Cr.PC could be resorted to only in a case where it is found that the charge is groundless. The learned Additional Sessions Judge further observed in the impugned order that, since Section 245(2) covers stages prior to tendering evidence under Section 244 Cr.PC, the material which the Magistrate has to consider to come to a finding as to whether the charge is groundless or not, is the complaint and the material placed before the court during enquiry under Section 202 Cr.PC. According to the learned Additional Sessions Judge, there were specific averments in the complaint regarding the offences of criminal conspiracy, forgery, cheating and



dishonestly inducing delivery of property and criminal breach of trust. Thus, according to the learned Additional Sessions Judge, since the ingredients of the offences taken cognizance of are prima facie made out, it cannot be said that the charge is groundless. It is for the above reasoning that the learned Additional Sessions Judge declined to interfere with the order of the learned Chief Judicial Magistrate dismissing the petition filed by the petitioners for discharge under Section 245(2) Cr.PC. There is absolutely no anomaly or irregularity in the above findings of the learned Additional Sessions Judge, warranting interference in a proceeding under Section 482 Cr.PC. After the completion of the evidence under Section 244 Cr.PC, the petitioners could very well seek their discharge under Section 245(1) Cr.PC, if no case has been made out which, if unrebutted, would warrant their conviction. As regards the contention of the petitioners that the courts below failed to look into the protest complaint in the context of objection to the refer report, it has to be stated that the petitioners could very well challenge the allegations in the protest complaint by referring to the contrary findings in the refer report at the appropriate stages in the further course of proceedings of this case. Therefore, the



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prayer in this petition to quash the above order passed by the learned Additional Sessions Judge, cannot be allowed.

In the result, the petition is hereby dismissed.

(Sd/-)
G. GIRISH, JUDGE

jsr



APPENDIX OF CRL.MC 2910/2020

PETITIONER ANNEXURES

- ANNEXURE I A TRUE COPY OF THE PRIVATE COMPLAINT FILED BY THE COMPLAINANT BEFORE THE CJM, THRISSUR DATED 13.06.2016 AS C MP NO.3383 OF 2016.
- ANNEXURE II A TRUE COPY OF THE REFER REPORT IN CRIME NO.2165 OF 16 OF THE THRISSUR TOWN EAST POLICE STATION DATED 30.6.2016.
- ANNEXURE III A TRUE COPY OF THE PROTEST COMPLAINT FILED BY THE SECOND RESPONDENT DATED 4.10.2016 AS CMP NO.5800 OF 2016 BEFORE THE CJM, THRISSUR.
- ANNEXURE IV A TRUE COPY OF THE APPLICATION FILED BY THE PETITIONERS AS CMP NO.5071 OF 17 IN CC NO.68 OF 17 BEFORE THE CJM, THRISSUR DATED 12.11.2017.
- ANNEXURE V A TRUE COPY OF THE OBJECTION FILED BY THE SECOND RESPONDENT TO ANNEXURE - IV DATED 15.11.2017.
- ANNEXURE VI A TRUE COPY OF THE ORDER PASSED IN CMP NO.5071 OF 2017 DATED 3.6.19 BEFORE THE CJM, THRISSUR.
- ANNEXURE VII A TRUE COPY OF THE ORDER PASSED IN CR.R.P.NO.31 OF 19 DATED 29.2.2020 BY THE 3RD ADDL. SESSIONS COURT, THRISSUR.