

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

FRIDAY, THE 10TH DAY OF JANUARY 2014/20TH POUSHA, 1935

Crl.MC.No. 3293 of 2012 (B)

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[C.C.NO.397/2012 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-1,  
CHANGANASSERY, KOTTAYAM DISTRICT,  
CRIME NO. 430/2012 OF KARUKACHAL POLICE STATION ,  
KOTTAYAM DISTRICT]

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PETITIONER:

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SRI.V.V.GOPINATHAN ACHARI,  
S/O.VELAYUDHAN ACHARI,  
KARUVELIL HOUSE, SWAMIPADY ROAD,  
ELAMAKKARA P.O., KOCHI-682 026.

BY ADV. SRI.GEORGE JOHNSON.

RESPONDENTS:

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1. MADUSOODANAN,  
S/O. NARAYANAN, MANNANIKKAL HOUSE, CHAMPAKKARA MURI,  
KARUKACHAL VILLAGE, KOTTAYAM DISTRICT, PIN-686 121.
2. THE STATE OF KERALA,  
REPRESENTED BY THE STATE PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM, PIN-682 031.

R1 BY ADV. SRI.A.C.DEVASIA,  
R2 BY PUBLIC PROSECUTOR SMT. BINDU GOPINATH.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD  
ON 10-01-2014, THE COURT ON THE SAME DAY PASSED  
THE FOLLOWING:

Prv.

**CRL.M.C. NO.3293/2012-B:**

**APPENDIX**

**PETITIONER'S ANNEXURES:**

- ANNEXURE A1:** A TRUE COPY OF THE SALE AGREEMENT DTD. 01/02/2012  
EXECUTED BY THE PETITIONER IN FAVOUR OF THE R.1.
- ANNEXURE A2:** A TRUE COPY OF THE SALE DEED EXECUTED BY THE  
PETITIONER IN FAVOUR OF THE R.1. DTD. 10/02/2012  
REGISTERED AS DOCUMENT NO.360 OF 2012 OF THE  
KARUKACHAL S.R.O.
- ANNEXURE A3:** A TRUE COPY OF THE JUDGMENT OF THE MUNSIFF COURT,  
CHANGANASSERY IN O.S. NO.19 OF 2005 DT. 13/07/2007.
- ANNEXURE A4:** A TRUE COPY OF THE PRIVATE COMPLAINT FILED BY THE R.1.  
BEFORE THE J.F.C.M-1 COURT, CHANGANACHERRY  
DTD. 05/06/2012.
- ANNEXURE A5:** A TRUE COPY OF THE F.I.R. IN CRIME NO.430 OF 2012 OF THE  
KARUKACHAL POLICE STATION.

**RESPONDENTS' ANNEXURES:** NIL.

**//TRUE COPY//**

**P.S. TO JUDGE.**

**Prv.**

**A.HARIPRASAD, J.**

**Crl.M.C. No.3293 of 2012**

**Dated this the 10<sup>th</sup> day of January, 2014.**

**ORDER**

Petitioner stands accused in C.C.No.397 of 2012 of Judicial First Class Magistrate Court-I, Changanacherry. Annexure A5 is the FIR in Crime No.430 of 2012 of Karukachal Police Station. Annexure A5 shows that the police registered Crime No.430 of 2012 against the petitioner alleging offences under Sections 406, 468 and 420 of the Indian Penal Code (for short, "IPC"). A complaint was filed before the learned Magistrate, which was forwarded to the police under Section 156 (3) of the Criminal Procedure Code (for short, "Cr.P.C.") for investigation. Gist of the allegations is that the accused/petitioner with an intention to cheat the complainant/1<sup>st</sup> respondent conveyed a property by a sale deed and later, it was found that the property was encumbered with a Co-operative Bank and therefore, the purchaser could not effect mutation.

2. Heard the learned counsel for the petitioner and the learned counsel for the 1<sup>st</sup> respondent/complainant. Learned Public Prosecutor also was heard.

3. Annexure A3 is the judgment in O.S. No.19 of 2005 of the Munsiff Court, Changanacherry between the parties to this case. It is an

admitted case that the complainant, who suffered a decree, took up the matter in appeal and aggrieved by the dismissal of the appeal, he has taken the matter in Second Appeal, which is pending before this Court.

4. Learned counsel for the petitioner drew my attention to Annexure A1 agreement whereby accused agreed to assign a strip of land to the complainant for the use as a pathway. The property agreed to be sold was conveyed as per Annexure A2 sale deed. Case in Annexure A4 complaint is that after executing and registering the sale deed, the complainant could not effect mutation as the entire property, including that in the schedule in Annexure A2, was outstanding in liability with a Co-operative Bank.

5. In order to attract an offence under Section 406 IPC, there must be an allegation in the complaint that there was breach of trust committed as defined in Section 405 IPC. Nowhere in the complaint it is pleaded that there was an entrustment of property by the complainant to the accused and the accused has misappropriated or pledged the property for his own use. None of the ingredients to attract the offence under Section 406 IPC has been made out.

6. Another charge is under Section 468 IPC which deals with forgery for the purpose of cheating. The complainant has no case that Annexure A1 agreement is the product of forgery. By virtue of Annexure A2

sale deed, it is an admitted case of the complainant, he obtained title with respect to 0.75 cents of land involved therein and it was purchased for the purpose of using as a way. Only grievance is that he could not effect mutation as there is a liability outstanding. Therefore, gist of the allegations in this respect is only that assignor/petitioner breached a condition in the warranty of title mentioned in Annexure A2. By no stretch of reasoning, it can be stated that an offence under Section 468 IPC has been made out in this context.

7. Learned counsel for the 1<sup>st</sup> respondent/complainant contended that at any rate an offence under Section 420 IPC will come into play. It is trite that to attract an offence under Section 420 IPC, there must be elements of cheating as defined in Section 415 IPC. It is axiomatic that the elements of cheating must be there at the commencement of the transaction. Nowhere it is pleaded in the complaint that the assignment was made by the accused to the complainant with a pre-determined intention of cheating him. It is seen that the parties have engaged in civil litigations also. Therefore, the assignment normally would have resulted in quietus to the litigation. However, second round of litigation in the form of Annexure A4 complaint has cropped up. Total averments in the complaint do not make out any of the offences mentioned in Annexure A5 FIR. Therefore, I find that continuance of the prosecution is an abuse of the

process of the court.

In the result, the petition is allowed. Annexure A4 complaint and Annexure A5 FIR are hereby quashed. All proceedings in C.C.No.397 of 2012 of Judicial First Class Magistrate Court-I, Changanacherry are to be dropped.

All pending interlocutory applications will stand dismissed.

**A. HARIPRASAD, JUDGE.**

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