



2025:KER:19577

Crl.M.C.No.5000/2019

-1:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

MONDAY, THE 10TH DAY OF MARCH 2025 / 19TH PHALGUNA, 1946

CRL.MC NO. 5000 OF 2019

CRIME NO.395/2012 OF NORTH PARAVUR POLICE STATION, ERNAKULAM

AGAINST THE ORDER IN CC NO.1083 OF 2016 OF JUDICIAL
MAGISTRATE OF FIRST CLASS - I, NORTH PARAVUR

PETITIONERS/ACCUSED NO:1 & 2:

- 1 K.R.HARIKRISHNAN
AGED 52 YEARS
S/O. M. P. RAVEENDRANATHA PILLAI,
KUTTAMATH HOUSE, KUDAMALLOOR KARA,
AIMANAM VILLAGE, KOTTAYAM, PIN - 686 015.
- 2 MAYA GOPINATH
AGED 46 YEARS
W/O. HARIKRISHNAN, PILLAI, KUTTAMATH HOUSE,
KUDAMALLOOR KARA, AIMANAM VILLAGE, KOTTAYAM,
PIN - 686 015.

BY ADV N.K.MOHANLAL

RESPONDENTS/COMPLAINANT NO.2:

- 1 SUB INSPECTOR OF POLICE, NORTH PARUR POLICE STATION
NORTH PARUR POLICE STATION, NORTH PARUR,
PIN - 683 513.
- 2 RENJITHAM,
W/O. SHAHEED, KANNANPARMBIL,
MADAPLATHURUTH DESOM, MOOTHAKUNNAM VILLAGE,
PARUR TALUK, NOW RESIDING AT SREEVALSAM,
KIZHAKKEPRAM, NORTH PARUR, KOTTUVALLY VILLAGE,
PARUR TALUK, PIN - 683 513.
- 3 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
PIN - 682 031.

BY ADV SRI.VARGHESE C.KURIAKOSE FOR R2
SRI. SANGEETHARAJ N.R., PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
04.03.2025, THE COURT ON 10.03.2025 PASSED THE FOLLOWING:



"CR"

ORDER

Accused Nos.1 and 2 in C.C.No.1083/2016 on the files of the Judicial First Class Magistrate Court, North Paravur have filed this petition under Section 482 of the Code of Criminal Procedure, 1973 (*in short, 'Cr.PC'*), to quash the proceedings against them. The offence alleged in the said case, where in the North Paravur Police filed the final report, are under Sections 420 and 120B I.P.C read with Section 34 I.P.C.

2. The case arose out of a complaint filed by the de facto complainant/second respondent before the Judicial First Class Magistrate Court-I, North Paravur with the following allegations:

3. Accused Nos.1 and 2 were introduced to the de facto complainant by the third accused, a friend of the de facto complainant's husband, at a time when the de facto complainant and her husband were in dire need of an amount of Rs.12,50,000/- for meeting the expenses of the marriage of their daughter. Accused Nos.1 and 2 had agreed to advance the above amount to the de facto complainant if the property having an extent of 19.775 cents where the de facto complainant resides, is offered as security by



executing a document in favour of the accused. It was agreed that the aforesaid document will be styled as a sale deed but the right of the de facto complainant over the said property was not intended to be transferred to the accused. The amount advanced as loan to the de facto complainant was to be repaid within a period of fifteen years with a reasonable rate of interest. The aforesaid property belonging to the de facto complainant, was agreed to be reconveyed to the de facto complainant upon clearance of the above loan liability with the accused. At the request of the accused, the de facto complainant opened a savings bank account at Indian Overseas Bank, Edappally Branch from where the accused arranged funds for advancing the money to the de facto complainant. Though the de facto complainant sought a loan for Rs.12,50,000/- only from the accused, an amount of Rs.25,00,000/- was credited to her account. When enquired about this, the accused explained that the remaining Rs.12,50,000/- would be made use of for settling the liability with the bank. The accused took the above amount of Rs.12,50,000/- with the assurance to repay it to the Bank. It was informed to the de facto complainant that the aforesaid loan was availed by the first accused with the second accused as guarantor/co-obligant. As per



the terms of agreement with the accused, the de facto complainant had been making repayment of the loan amount through the account of the first accused at State Bank of Travancore, Kottayam Branch. By way of 43 installments, the de facto complainant had remitted an amount of Rs.5,23,055/- into the account of the first accused towards repayment of the loan availed from the bank. However, the accused committed default in making payment to the loan account leading to the initiation of proceedings under the SARFAESI Act by the bank. In the month of May, 2010, the complainant received a possession notice from the bank towards proceeding against the 19.775 cents of land and building situated therein where she had been residing, towards realisation of the loan arrears. It was only at that time that the complainant realised that the property which she had offered as security to the accused was encumbered with the bank by the accused without her knowledge and consent for availing the loan. So also, the accused had availed a loan of Rs.25,00,000/- from the bank, as against the request of the de facto complainant to advance an amount of Rs.12,50,000/-, with the intention to deceive the de facto complainant. The accused had fraudulently and dishonestly offered the residential property of the



de facto complainant as security for the loan availed from the bank under the pretext that they were having title over the said property. As a result of the aforesaid act of the accused, the property worth more than Rs.80 lakhs which belonged to the de facto complainant happened to be proceeded against by the bank for the realisation of the outstanding loan amount of Rs.28,58,200/-. In the above circumstances, the de facto complainant had approached the Debt Recovery Tribunal, Ernakulam and obtained interim orders. The de facto complainant had also instituted a suit before the Sub Court, North Paravur for establishing her claim over the property. The de facto complainant would not have executed the document in respect of her 19.775 cents of land with building in favour of the accused if she knew that the accused intended to treat it as a pucca sale deed to avail loan by offering it as security. Thus, the accused gained unjust enrichment by fraudulently and dishonestly misleading the de facto complainant about the nature of the document executed in their favour, and also by avoiding repayment of the loan to the Bank, resulting in huge loss to the de facto complainant as a result of the proceedings initiated by the bank against her property. Therefore, the accused are liable to be proceeded against for the commission of



offence under Sections 120B and 420 I.P.C read with Section 34 I.P.C.

4. The aforesaid complaint was forwarded by the learned Magistrate to the North Paravur Police under Section 156(3) Cr.P.C for investigation and report. Accordingly, the S.I of Police, North Paravur registered a crime, conducted the investigation and laid the final report before the learned Magistrate. The learned Magistrate took cognizance of the offence alleged in the final report, and issued summons to the petitioners/accused to answer the charge of the offences punishable under Sections 120B and 420 I.P.C read with Section 34 I.P.C. It is the aforesaid proceedings of the learned Magistrate which the petitioners seek to quash in exercise of the powers under Section 482 Cr.P.C of this Court.

5. In the present petition, the petitioners would contend that none of the offences alleged in the final report are attracted, in the facts and circumstances of the case. According to the petitioners, the second respondent had filed the complaint in respect of an issue which is purely of civil nature pending consideration of the Sub Court, North Paravur in a suit instituted by her as O.S.No.23/2009. It is further contended that neither the de facto



complainant who had retired as Principal from a Vocational Higher Secondary School, nor her husband who was a Manager of a Scheduled Bank, could be expected to have been unaware of the nature and consequences of the sale deed executed in favour of the petitioners. It is also stated that the contention of the de facto complainant that the aforesaid sale deed was intended only as a security document, is totally false. According to the petitioners, the de facto complainant was allowed to reside in the property sold to them, only as a licensee until she gets alternate accommodation. Thus, it is contended that there is absolutely no basis for the allegation of criminal conspiracy and cheating attributed to the petitioners in connection with the transaction with the de facto complainant.

6. Heard the learned counsel for the petitioners, the learned counsel for the second respondent and the learned Public Prosecutor representing respondents 1 and 3.

7. The main contention of the petitioners is that the transaction between the petitioners and the second respondent is purely of civil nature, and that it is not possible to say that the offence under Sections 420 & 120B IPC would be made out in the



facts and circumstances of the case. The learned counsel for the petitioners further pointed out that the institution of O.S.No.23/2019 by the second respondent before the Sub Court, North Paravur, against the petitioners in connection with the issue involved in this case, itself is testament to the civil nature of the dispute. Thus, it is argued that the criminal prosecution initiated against the petitioners are liable to be terminated to prevent the abuse of process of court.

8. It is true that the second respondent had admittedly instituted a suit against the petitioners for the retrieval of her property in respect of which a document was executed in favour of the petitioners at the time when the petitioners are said to have agreed to arrange a loan of Rs.12,50,000/- to her to meet the expenses of the marriage of her daughter. But, at the same time, it is not possible to ignore the specific allegation of the second respondent in her complaint as well as the statements given to the Police that right from the very beginning the intention of the petitioners was to defraud her by whisking away her landed property and house, exploiting her grim financial necessity in connection with the marriage of her daughter. It is also pertinent to note that there is the specific allegation against the petitioners that, though the



second respondent had requested a loan of Rs.12,50,000/-only, the petitioners availed a loan of Rs.25,00,000/- from the bank by offering as security, the property of the second respondent, which they managed to get conveyed in their name by misleading the second respondent. The balance Rs.12,50,000/- is alleged to have been appropriated by the petitioners for their own need. That apart, the second respondent is seen to have deposited a total amount of Rs.5,23,055/- in the account of the first petitioner by way of 43 instalments towards repayment of the loan instalments due to the bank concerned. The aforesaid entire amount of Rs.5,23,055/- is alleged to have been misappropriated by the petitioners, instead of remitting the same in the loan account. It is not possible to ignore the above aspects of the alleged fraudulent and dishonest acts of the petitioners causing loss to the second respondent in terms of money, and the deprivation of her landed property and residence.

9. It is true that Courts are to be vigilant against the nefarious attempts of unscrupulous litigants to drag the opponents in civil disputes to criminal prosecution by giving the colour of criminality to such disputes to pressurize and coerce them to accede to their demands. Such complaints where the core issue of civil



liability is attempted to be portrayed as cheating or criminal breach of trust, are to be weeded out at the threshold, not only to avoid unnecessary harassment to the opposite party, but also to save the precious time of courts which is to be utilized for the resolution of genuine issues. But at the same time, the fact that many of the issues relating to breach obligations are inseparably linked with the elements constituting the offences of criminal breach of trust and cheating, cannot be ignored by criminal courts. The mere fact that a dispute partakes the character of civil nature leading to the institution of a suit by one of the parties against his counterpart, does not mean that the objectionable acts alleged in that case could never constitute a criminal offence. It would amount to travesty of justice to shut out the doors of criminal court against a party for the sole reason that he had opted for civil remedy to mitigate the loss caused to him due to the wrongful acts committed by his opponent, which would also constitute specific criminal offences.

10. On the aspect relating to criminal cases, which partake the character of civil nature as well, the Apex Court, in ***Lalmuni Devi v. State of Bihar***, [(2001) 2 SCC 17] held as follows:-



"There could be no dispute to the proposition that if the complaint does not make out an offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. In this case, on the facts, it cannot be stated, at this prima facie stage, that this is a frivolous complaint. The High Court does not state that on facts no offence is made out. If that be so, then merely on the ground that it was a civil wrong the criminal prosecution could not have been quashed."

11. On the same aspect, in ***M. Krishnan v. Vijay Singh, [(2001) 8 SCC 645]*** the Apex Court had observed as follows:-

"Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case, the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents. The proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents. In a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of



criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in a criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of. The High Court was not, in any way, justified to observe:

"In my view, unless and until the civil court decides the question whether the documents are genuine or forged, no criminal action can be initiated against the petitioners and in view of the same, the present criminal proceedings and taking cognizance and issue of process are clearly erroneous."

12. Again, in ***Kamaladevi Agarwal v. State of W.B., [(2002) 1 SCC 555]***, the Hon'ble Supreme Court held as follows on the same point:-

"In view of the preponderance of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings."



13. In the case on hand, the de facto complainant is aggrieved by the alleged deception perpetrated up on her by the petitioners, by their act of advancing an amount of Rs.12,50,000/- to her making use of the loan availed for double the said amount by pledging the property of the defacto complainant without her knowledge and consent; and further appropriating the excess amount of Rs.12,50,000/- for their personal needs, and causing the property of the de facto complainant to be proceeded against by the Bank, by avoiding repayment of the loan. The allegation that the petitioners even did not care to remit to the Bank the loan instalments which the de facto complainant deposited in to the account of the 1st petitioner, would further show that they were allegedly having the dishonest intention to get the residential property of the de facto complainant appropriated by the Bank for the realisation of the outstanding loan liability. Therefore, the mere fact that the dispute between the petitioners and the second respondent is the subject matter of a suit pending before the Sub Court, North Paravur, cannot be taken as a reason to eschew the specific accusations levelled by the second respondent against the petitioners about the cheating committed pursuant to a criminal



2025:KER:19577

CrI.M.C.No.5000/2019

-:14:-

conspiracy. The matter requires detailed scrutiny in the trial before the learned Magistrate, and it is not possible to stifle the prosecution by resorting to the inherent powers of this Court under Section 482 Cr.PC. Accordingly, I find that the prayer in this petition to quash the proceedings against the petitioners is devoid of merit.

In the result, the petition is hereby dismissed.

(Sd/-)

G. GIRISH, JUDGE

jsr/DST



2025:KER:19577

Crl.M.C.No.5000/2019

-:15:-

APPENDIX

PETITIONER ANNEXURES

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| ANNEXURE A1 | CERTIFIED COPY OF THE CHARGE SHEET FIR NO.395/2012 BEFORE HONOURABLE JFCM COURT-I, NORTH PARUR. |
| ANNEXURE A2 | A TRUE COPY OF THE PRIVATE COMPLAINT DATED 21/02/2012 BEFORE THE HONOURABLE JFCM COURT-I, NORTH PARUR. |
| ANNEXURE A3 | A TRUE COPY OF ORDER DATED 25/10/2016 IN IOP NO.3/2011 BEFORE THE HONOURABLE SUB COURT, NORTH PARUR. |