

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 9TH FEBRUARY 2005 / 20TH MAGHA 1926

Crl.MC.No. 7602 of 2002

CC.962/2000 of JUDL.MAGISTRATE OF FIRST CLASS-II, ERNAKULAM
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PETITIONER: ACCUSED:

T. THOMAS MATHAI, S/O. MATHAI,
THADVILLA, CHANGAMPUZHA NAGAR P.O.,
KOCHI - 33.

BY ADV. SRI.K.R.SACHIDANANTHAN
SRI.N.G.SUNIL
SMT.P.JAYA

RESPONDENTS: COMPLAINANT:

1. JOSEPH ALLEN, S/O. THOMAS,
PALATHURUTHIL HOUSE, CHERANALLOOR VILLAGE,
ERNAKULAM.
2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM.

BY ADV. SRI.P.B.ASOKAN
SRI.GEO PAUL
SRI.JOSON JACOB
SMT.P.LATHA
SRI.E.A.THANKAPPAN
SRI.SHERRY J. THOMAS
PUBLIC PROSECUTOR SRI.THAVAMONY

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 09/02/2005, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K. HEMA, J.

Crl. M. C. No.7602 of 2002

Dated this the 9th February, 2005

O R D E R

The petitioner is the accused in C.C.No.962 of 2000 on the file of the Judicial First Class Magistrate's Court-II, Ernakulam. A complaint is filed by first respondent herein against the petitioner alleging offences under Sections 417, 420, 465, 468, 406 and 379 IPC. The private complaint was first referred to the Police under Section 156(3) Cr.P.C. and Police submitted a final report, referring the case. Thereafter, first respondent filed a protest complaint, which is pending consideration before the court below. The petitioner seeks to quash the said complaint, Annexure-F, in this proceedings.

2. As per the allegations in the complaint, petitioner and first respondent were school-mates and old friends. The complainant was abroad in connection with employment and he can be in India in every alternate 35 days, on working arrangement. When the complainant was away, the entire household affairs of complainant was managed by his son, till his accidental death in 1996. Since there was nobody else to look after the affairs, the complainant executed a power of attorney in favour of the petitioner. The complainant's wife also executed a power of attorney. The management of the construction work of his house and other property matters were entrusted with the petitioner who expressed, his willingness to help the complainant.

The complainant also entrusted with him several blank signed

cheques on different occasions for various purposes. For example, to pay instalments towards car loan, for meeting expenses for construction of the house etc. There were several transactions between petitioner and complainant. But accused allegedly drew various amounts from the bank. He also allegedly forged certain documents, including blank signed cheques of the complainant. He stole certain stamp papers belonging to the complainant and allegedly committed misappropriation etc.

3. The petitioner and his counsel were absent at the time of hearing. On going through the petition, I find that the main ground raised is that no offence under Section 406 IPC is attracted in this case, since the complainant has not mentioned what are the properties entrusted to the petitioner. The other contention is that the specific details with respect to the number of the cheques etc., entrusted with petitioner are not given in the complaint. The accurate amount of alleged withdrawal is also not specified therein. The complainant is also allegedly silent about the exact amount misappropriated. It is also contended that it would be clear from the power of attorney itself that no entrustment was made.

4. It is further contended that offence under Section 379 IPC is not made out, since the complaint does not disclose any allegation that petitioner has taken away any property, out of his possession. But learned counsel for first respondent submitted that there is a specific allegation in paragraph 12 of the complaint that stamp papers were stolen, the details of which can be established by evidence.

5. It is true that the specific details with respect to the amount,

cheque number etc. are not seen mentioned in the complaint with respect to certain transactions. But, such omissions alone cannot be made a ground to quash the complaint. It is well-settled that even if the complaint is silent about one or two ingredients of the offences, if there are factual foundations in the complaint, this Court cannot hasten to quash the complaint. On going through the complaint, it is clear that various allegations are made in the complaint which will attract certain offences under the Indian Penal Code and this is a fit case where the court has to be proceed against the petitioner, in accordance with law.

6. The petitioner filed a list of witnesses and also documents to establish his case. Therefore, it is too premature at this stage to hold that the complaint is without any basis or frivolous. Another ground is also seen raised that the allegation that the accused had the fraudulent and dishonest intention to deceive the complainant at the inception is missing in the complaint. But as already referred to by me earlier, since factual foundations are present in the complaint, even if there is no specific allegation in respect of one of the ingredients of the offence, that may not be sufficient to quash the complaint.

7. In the above circumstances, I am satisfied that this is not a fit case to quash the complaint under Section 482 Cr.P.C.

The petition is dismissed.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

CRL.M.C.NO.7602 OF 2002

JUDGMENT

9.02.2005