

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

FRIDAY, THE 30TH DAY OF OCTOBER 2020 / 8TH KARTHIKA, 1942

Cr1.MC.No.6195 OF 2016

CRIME NO.365/2016 OF ARUVIKKARA POLICE STATION ,
Thiruvananthapuram

PETITIONERS/ACCUSED 1 TO 4:

- 1 SHEENA @ SEENA S.,
 AGED 24 YEARS,
 D/O SANTHA J.,
 SHINI BHAVAN,
 VELLOORKONAM, MANCHA P.O.,
 NEDUMANGAD-695 541.
- 2 MADHU T.,
 AGED 49 YEARS,
 S/O THANKAPPAN NADAR,
 SHINI BHAVAN,
 VELLOORKONAM, MANCHA P.O.,
 NEDUMANGAD-695 541.
- 3 SANTHA J.,
 AGED 46 YEARS,
 W/O MADHU T.,
 SHINI BHAVAN,
 VELLOORKONAM, MANCHA P.O.,
 NEDUMANGAD-695 541.
- 4 SINI,
 D/O SANTHA J.,
 SHINI BHAVAN,
 VELLOORKONAM, MANCHA P.O.,
 NEDUMANGAD-695 541.

BY ADVS.
SMT.M.R.JAYALATHA
SRI.N.G.GIREESAN
SMT.P.SREESHA

RESPONDENTS/COMPLAINANT & STATE:

- 1 STATE OF KERALA,
 REPRESENTED BY THE PUBLIC PROSECUTOR,
 HIGH COURT OF KERALA,
 ERNAKULAM-682 031.

- 2 THE SUB INSPECTOR OF POLICE,
ARUVIKKARA POLICE STATION, ARUVIKKARA P.O.,
THIRUVANANTHAPURAM DISTRICT -695 564.
- 3 M/S. UNION BANK OF INDIA,
NEDUMANGAD BRANCH,
REP.BY ITS BRANCH MANAGER,
NEDUMANGAD PO,
THIRUVANANTHAPURAM DISTRICT, 695 541.
- 4 RAJAN,
S/O JOHN,
LIGITHA BHAVAN,
ARUVIKARA, MANJA P.O,
THIRUVANANTHAPURAM DISTRICT-695 541.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
30.10.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

Dated this the 30th day of October 2020

This Cr1.M.C. has been filed under Section 482 Cr.P.C. to quash all further proceedings in Crime No.365/2016 of Aruvikkara Police Station. Petitioners' case is that the case was registered on the basis of a complaint filed by the 4th respondent, alleging offences punishable under Section 420 read with Section 34 of the I.P.C.

2. According to the 4th respondent, petitioners sold the properties lying in Sy.No.178/9/3 of Aruvikkara Village to the 4th respondent, suppressing the education loan availed by the 1st petitioner and mortgaging the properties. The 4th respondent alleged that the 3rd respondent bank now files a suit and attached property of the petitioners and thereby the petitioners cheated the 4th respondent.

3. According to the petitioners, petitioners 1 and 4 are daughters of petitioners 2 and 3. Petitioners 2 and 3 got the title of property by Document No. 1442/1994. The 1st petitioner availed an education loan of Rs.3,00,000/- (Rupees Three Lakhs Only), from the Union Bank of India in 2008. They executed a loan agreement and a promissory note in favour of the 3rd respondent. A letter of undertaking was also executed by the 1st petitioner. Copy of loan agreement is marked as Annexure B, copy of letter of undertaking is marked as Annexure C and copy of promissory note executed by the 1st petitioner is marked as Annexure D. So according to the petitioners, the property is not mortgaged to the 3rd respondent bank at any point of time for availing the education loan. Hence the question of cheating does not arise.

4. Counsel for the 3rd respondent bank

submitted that there is no mortgage executed at the time of availing the education loan. The counsel for the 3rd respondent bank also submitted that the loan has already been closed.

5. 4th respondent was duly served. There is no representation for the 4th respondent/defacto complainant. He remained absent. Since the property is not mortgaged with the Bank , the allegation in the F.I.S. that, mortgaging the property, loan was availed prior to sale is seems to be false. So also only 10 cents of property is sold and total extent is 20 ares. So the compliant filed by the 4th respondent alleging offences punishable under Section 420 read with Section 34 of the I.P.C. against the petitioners seems to be not sustainable in law. Since the ingredients of offence under Section 420 I.P.C. is not made out prima facie. So continuance of proceedings based

on Annexure-G F.I.R. would be abuse of process of law.

So taking into account the facts and circumstances, the Crl.M.C. is allowed quashing all further proceedings in Crime No.365/2016 of Aruvikkara Police Station, Thiruvananthapuram.

Sd/-
M.R. ANITHA
JUDGE

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE-A	A TRUE COPY OF THE SETTLEMENT DEED DATED 29.7.2009.
ANNEXURE-B	A TRUE COPY OF THE EDUCATION LOAN AGREEMENT DATED 22.8.2008.
ANNEXURE-C	A TRUE COPY OF THE LETTER OF UNDERTAKING EXECUTED BY THE FIRST PETITIONER DATED 14.9.2010.
ANNEXURE-D	A TRUE COPY OF THE PROMISSORY NOTE EXECUTED BY THE 1ST PETITIONER.
ANNEXURE-E	A TRUE COPY OF THE PLAINT IN OS NO.246/15 DATED 2.3.2015.
ANNEXURE-F	A TRUE COPY OF THE PETITION SUBMITTED BY THE UNION BANK OF INDIA IN OS NO.246/2015 BEFORE THE HON'BLE MUNSIF COURT NEDUMANGAD.
ANNEXURE-G	A CERTIFIED COPY OF THE FIRST INFORMATION REPORT DATED 24.4.2016 IN CRIME NO.365/2016 ON THE FILES OF ARUVIKARA POLICE STATION.

RESPONDENT'S EXHIBITS:NIL

SSK

//TRUE COPY//

PA TO JUDGE