



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 27TH DAY OF JUNE 2024 / 6TH ASHADHA, 1946

CRL.MC NO. 7104 OF 2023

CRIME NO.1139/2019 OF KODUNGALLUR POLICE STATION, THRISSUR

IN CC NO.1190 OF 2019 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KODUNGALLUR

PETITIONERS/ACCUSED:

- 1 MANSOOR ALI,
AGED 34 YEARS
S/O ABOOBACKER, PARAPURATH HOUSE, VILATHUR DESOM,
THIRUVEGAPURA VILLAGE, PALAKKAD, PIN - 679304
- 2 LEESHYA PRAMOD,
AGED 44 YEARS
W/O PRAMOD, KOROTH HOUSE, PUTHUPANAM DESOM,
NADAKKUTHAZHA VILLAGE, VADAKARA, KOZHIKODE DISTRICT,
PIN - 673101
- 3 SHIYAS,
AGED 43 YEARS
S/O KUNJU MUHAMMED, MOLEKUDY HOUSE, VENGOLA DESOM,
ARAKKAPADY VILLAGE, KUNNATHUNADU TALUK, PERUMBAVOOR, ERNAKULAM,
PIN - 683556
BY ADVS.
VARGHESE C.KURIAKOSE
SUSANTH SHAJI
ALBIN A. JOSEPH
AMRITHA.J

RESPONDENT/STATE & INVESTIGATING OFFICER & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA,
REPRESENTE BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
- 2 CIRCLE INSPECTOR OF POLICE,
KODUNGALLUR POLICE STATION, THRISSUR, PIN - 680664
- 3 SEENABAI,
AGED 44 YEARS
W/O VIPIN, DIRECTOR, M/S FORIDO TRAVEL & TOURISMPVT. LTD.,
ROOM NO.XVII/384, IST FLOOR, EDISON COMPLEX, THEKKENADA,
KODUNGALLUR & RESIDING AT EASWARAMANGALATH HOUSE, T.K.S. PURAM,
KODUNGALLUR, PIN - 680664
SR PP - RENJITH GEORGE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27.06.2024,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**“C.R”****ORDER****Dated this the 27th day of June, 2024**

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, by the petitioners, who are accused in C.C. No.1190/2019 on the files of the Judicial First Class Magistrate Court, Kodungallur, seeking the following relief:

For these and other grounds, which may be urged, at the time of hearing, it is most respectfully prayed that this Honourable Court may be pleased to admit this CrL.M.C., call for the records leading to the case examine the same and quash the entire proceedings in C.C.No.1190/2019 on the files of Judicial First Class Magistrate Court, Kodungallur which has its genesis in Annexure-A3 final report and thus secure ends of 2 has justice to the petitioners, in the interests of justice.

2. Heard the learned counsel for the petitioners as well as the learned Public Prosecutor, in detail. Perused the relevant materials.



3. In this matter, the defacto complainant, who is the Director of M/s Forido Travel and Tourism Pvt. Ltd preferred a private complaint before the Judicial First Class Magistrate Court, Kodungallur, which resulted in registration of Crime No.1139/2019 of Kodungallur Police Station. It is alleged in the private complaint that the petitioners, after having common intention of gaining unjust enrichment for themselves and for causing unjust loss to the defacto complainant, entered into an agreement with an intention to cheat and defraud her. Later, the petitioners failed to perform the terms of the agreement and thereby cheated the defacto complainant and committed the offence of breach of trust also. It is on this premise, the prosecution alleges commission of offences punishable under Sections 405, 406, 415, 418, 420 read with 34 of IPC.

4. At the time of hearing, the learned counsel for the petitioners relied on Annexure.A4 agreement to contend that the terms of the agreement could not be materialized for justified reasons, therefore there is breach of contract, for which the remedy is to file suit for



damages, since every breach of contract did not amount to breach of trust. The allegation in the Final Report won't stand as against the petitioners. Therefore, he pressed for quashment of the proceedings.

5. Learned Public Prosecutor opposed the prayer for quashment stressing on the prosecution allegations.

6. On perusal Annexure.A4 agreement, the same would suggest that there was offer and acceptance of reciprocal promises. But the petitioners failed to perform their part of contract. If so, the consequential event is breach of contract. Each and every breach of contract would not amount to breach of trust or cheating, unless the every intention to cheat and defraud the defacto complainant at the very inception is to be born out from the prosecution records. Merely for breach of contract, criminal proceedings would not lie and the remedy in case of breach of trust is to sue for damages.

7. In the instant case, what is made out is merely a breach of contract and not breach of trust. Since, breach of contract would not attract breach of trust or cheating, the criminal proceedings as against the petitioners are



found to be unwanted.

8. Accordingly, this petition stands allowed and all further proceedings in C.C.No.1190/2019 on the files of Judicial First Class Magistrate Court, Kodungallur stand quashed.

Registry is directed to forward a copy of this order to the trial court, within three days, for information and further steps.

Sd/-
A. BADHARUDEEN
JUDGE

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APPENDIX OF CRL.MC 7104/2023

PETITIONER ANNEXURES :

- Annexure A2** TRUE PHOTOSTATCOPY OF THE F.I.R. IN CRIME NO.1139/2019 DATED 17.10.2019 ON THE FILES OF KODUNGALLUR POLICE STATION, THRISSUR DISTRICT
- Annexure A3** TRUE PHOTOCOPY OF THE FINAL REPORT IN CRIME NO.1139/2019 DATED 17.10.2019 ON THE FILES OF KODUNGALLUR POLICE STATION, THRISSUR DISTRICT
- Annexure A4** TRUE PHOTOCOPY OF THE AGREEMENT RELIED ON BY THE PROSECUTION DATED 13.02.2019 WHICH IS PART OF THE FINAL REPORT
- Annexure A5** TRUE COPY OF THE FIR IN CRIME NO.423/2019 ON THE FILES OF CRIME BRANCH, ERNAKULAM DATED 02.08.2019
- Annexure A6** TRUE PHOTOCOPY OF THE I.O.P. NO.12/2020 ON THE FILES OF IIIRD ADDITIONAL SUB COURT, ERNAKULAM DATED 09.07.2020

RESPONDENTS' ANNEXURES : NIL