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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 4TH DAY OF DECEMBER 2024 / 13TH AGRAHAYANA, 1946

CRL.MC NO. 2948 OF 2023

CRIME NO.3099/2017 OF ALUVA EAST POLICE STATION, ERNAKULAM

CC NO.1797 OF 2017 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I, ALUVA

PETITIONERS/ACCUSED 1 TO 3:

1 MANOJ GEORGE
S/O.LATE K.G.GEORGE,KANNADIYIL HOUSE, MUTHIRAPPADAM, P.O.THAIKKATTUKARA, CHOORNIKKARA VILLAGE, ALUVA, ERNAKULAM DISTRICT, PIN - 683106

2 JEESON GEORGE
S/O.LATE K.G.GEORGE, KANNADIYIL HOUSE, MUTHIRAPPADAM, P.O.THAIKKATTUKARA, CHOORNIKKARA VILLAGE, ALUVA, ERNAKULAM DISTRICT, PIN - 683106

3 MARY MAGLIN@MAGLIN
W/O.MANOJ GEORGE,KANNADIYIL HOUSE, MUTHIRAPPADAM, P.O.THAIKKATTUKARA, CHOORNIKKARA VILLAGE, ALUVA, ERNAKULAM DISTRICT, PIN - 683106

BY ADV.M.S.BREEZ

RESPONDENTS/STATE/DE FACTO COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM, KOCHI, PIN - 682031

2 SHIJI GEORGE
W/O.JIJI GEORGE,VADAKKAL HOUSE, MUTHIRAPPADAM, P.O.THAIKKATTUKARA, CHOORNIKKARA VILLAGE,ALUVA, ERNAKULAM DISTRICT, PIN - 683106

R1 BY SR.PUBLIC PROSECUTOR SRI.RENJIT GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON ON 29.11.2024, THE COURT ON 04.12.2024, PASSED THE FOLLOWING:

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ORDER

Dated this the 04th day of December, 2024

Accused Nos.1 to 3 in Crime No.3099/2017 of Aluva East Police Station, which is now pending as C.C.No.1797/2017 on the files of the Judicial First Class Magistrate Court-I, Aluva, seek quashment of the above proceedings on the ground that they are absolutely innocent of the allegations.

2. Heard the learned counsel for the petitioners and the learned Public Prosecutor, in detail. Though notice served to the 2nd respondent, no appearance.

3. In a nutshell, the allegation of the prosecution is that the accused herein committed offences punishable under Sections 447 and 506(i) r/w Section 34 of the Indian Penal Code, 1860 (for short, 'the IPC' hereinafter) as well as under Sections 17 and 18 of the Kerala Money-Lenders Act, 1958 (for short, ‘the Act, 1958’ hereinafter) and Section 3 of the Kerala Prohibition of Charging Exorbitant Interest Act, 2012 (for short,

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'the Act, 2012). The sum and substance of the allegation is that, the 1st accused, who did not have any licence under the Act, 1958, gave Rs.6 Lakh to the de facto complainant and her husband on undertaking to pay Rs.36,000/- towards interest for the said sum after obtaining blank cheque leaves of the de facto complainant and her husband. Thereafter, on 01.10.2016, the 3rd accused threatened the husband of the de facto complainant over phone that case would be filed against them, if Rs.3 Lakh with interest would not be repaid. Later, at 11.00 hrs. on 14.6.2017, the 1st accused went to the house of the de facto complainant and threatened them and demanded repayment of Rs.3 Lakh with interest.

4. While seeking quashment of the entire proceedings, it is submitted by the learned counsel for the petitioners that, as far as petitioners 2 and 3, who are arrayed as accused Nos.2 and 3 are concerned, not even remote allegations are raised against them. However, they also got arrayed as accused, since they are 1st petitioner's brother and wife, respectively. It is submitted by the learned counsel for the petitioners further that the 1st petitioner is not a money lender and he has never run money lending business, for which licence

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is made mandatory under Section 3 of the Act, 1958. According to the learned counsel for the petitioners, when the de facto complainant and her husband approached the 1st petitioner to advance Rs.6 Lakh for their urgent need, which was given as loan and for which, the de facto complainant and her husband had issued blank cheque leaves to ensure its repayment. Since the amount was defaulted, the 1st accused demanded repayment of the same. At this juncture, this case has been foisted, without any materials. According to the learned counsel for the petitioners, in order to attract the offence under Section 17 of the Act, 1958, money lending business shall not be carried out without licence or in violation of the conditions of the licence. The learned counsel would further submit that, in this matter, the 1st petitioner did not run a money lending business and therefore, he did not require any licence and therefore, the offence under Section 17 punishable under Section 18 of the Act, 1958, is not made out *prima facie*. Similar is the position as far as Section 3 of the Act, 2012, is concerned. Apart from that, it is argued by the learned counsel for the petitioners that demand for money is the premise on which the prosecution alleges commission of offences punishable under Sections 447 and

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506(i) r/w Section 34 of the IPC. Since the 1st petitioner/1st accused is entitled to get back the money he had given as loan, the demand for the same would not attract the said offences and therefore, the quashment, as sought for, is liable to succeed.

5. The learned Public Prosecutor even though opposed quashment, he fairly conceded that during investigation, prosecution did not collect any materials to show that the 1st petitioner is a man doing money lending business.

6. In the decision in **Sebastian Joseph** v. **State of Kerala and Ors.** reported in **[MANU/KE/2404/2024]**, this Court considered the essentials to attract offence under Section 3 r/w Section 17 of the Kerala Money Lenders Act, 1958 as well as under Section 3 r/w Section 9(a) of the Kerala Prohibition of Charging Exorbitant Interest Act, 2012, after referring the earlier decisions on the point as stated in paragraph Nos.5 to 13 while quashing the proceedings against the petitioner therein, where also, no materials collected by the prosecution to prove the allegations. Paragraph Nos.5 to 13 read as under:

"5. According to the learned counsel for the petitioner, going by the prosecution records, none of

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*the offences would attract in the facts of this case, and he also argued that on similar facts, the Apex Court as well as this Court quashed similar crimes. The learned counsel for the petitioner has placed decision of the Apex Court dated 28.01.200 in Appeal(Crl) 91/2000 (**G.Sagar Suri and Another vs. State of UP and Others).***

*6. In **G.Sagar Suri's** case (supra), the allegation was that the finance company gave Rs.50 lakh by means of cheque and the complainant issued two cheques for the repayment of the same, viz., one cheque for Rs.50 lakh and the other cheque was for Rs.86,625/- towards interest. In the said decision, the Apex Court found that the prosecution is clearly an abuse of process of law in a case where the prosecution under Section 138 of the Negotiable Instruments Act already pending against the appellants and the other accused.*

*7. The learned counsel for the petitioner also placed decision of this Court dated 18.03.2020 in Crl.M.C.No.3090/2015 (**Varghese Kurian vs.State of Kerala),** where the prosecution alleged commission of offences punishable under Section 420 r/w Section 34 of IPC as well as Section 3 r/w Section 17 of Kerala Money Lenders Act and Section 9(a) of the Act, 2012. In the said case, this Court, after analysing the facts of the case, stated in paragraph Nos.13 and 14 as under:*

> *"13. The contention that the*

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petitioners are moneylenders is also not acceptable because Section 17 of the Kerala Money-Lenders Act will not be attracted in solitary transactions, even if the alleged transaction between the petitioners and the defacto complainant is accepted to be a loan advanced by the petitioners. In a catena of decisions, the Kerala High Court has held that to define a person as a money-lender, it must be proved by the prosecution that he is a person engaged in the business of money-lending as his primary or secondary business.(See Vimal v. State of Kerala and other 2015(1)KLT524) There is not a scintilla of material produced by the prosecution in this regard.

14. In order to attract an offence under the Interest Act, it must be proved that the accused was charging interest at a rate higher than the maximum rate of interest charged by commercial Banks on loans granted by them. It is also pertinent to note that the Interest Act had come into effect only on 27.8.2012 and the alleged transactions between the petitioners and the defacto complainant in the instant case took place in 2003, 2004 and 2006. There is no other material indicating that the petitioners had actually

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> *demanded or realised any interest. Being a penal consequence, the Interest Act which came into effect only in the year 2012 cannot be attracted as it does not have any retrospective effect, in this case. The contention that the prosecution is barred by limitation under section 468 Cr.PC; is however not acceptable as the allegation is one of cheating punishable under section 420 IPC. After having bestowed my anxious considerations to all the materials produced in this case, I find that the case against petitioners is not sustainable as it would only amount to abuse of process of law."*

8. Similar view has been taken by this Court in the order dated 30.09.2015 in Crl.M.C.6308/2014 **(P.B. Sudhakaran V. State of Kerala and Another)** and in the order dated 12.03.2020 in Crl.M.C.2729/2017 (**Muhammed Basheer V. State of Kerala and Another)**.

9. The learned Public Prosecutor though attempted to justify the prosecution case, the learned counsel for the petitioner pointed out Annexure III statement, form part of the final report prepared by the Investigating Officer Sri.Anilraj, stating that after registration of this Crime, the Investigating Officer had conducted search at the residence of the

accused but he could not trace out anything to support the prosecution.

10.Since the prosecution alleges commission of offences punishable under Sections 420 and 506(i) IPC, under Section 3 r/w 17 of the Kerala Money Lenders Act and under Section 3 r/w 9(a) of the Act, 2012, it is apposite to refer Sections 3 and 17 of the Money Lenders Act and Sections 3 and 9 of the Act, 2012 and the same are as under:

Kerala Money Lenders Act

> ***"3. Money-lender to obtain licence. -*** *(1) From the date on which the provisions of this Act are brought into force in any area no person, firm or joint family or unincorporated association of individuals shall commence or carry on or continue business as a money lender at any place in such area without a licence obtained under this Act or in contravention of the terms thereof:*
>
> *Provided that nothing in this section shall be deemed to prohibit a person who has applied for a licence to carry on or to continue business as a money-lender pending orders on his application.*
>
> *(2) Where a money-lender has more than one shop or place of business, whether in the same town or village or in different towns or villages he shall obtain a separate*

licence respect of each shop or place of business.

(3)(a)Where a money-lender is a registered firm the licence shall be obtained in the firm's name.

(b)Where a money-lender is an undivided joint family, the licence shall be obtained in the name of the manager or the karanavan or the yajaman, as the case may be, described as such in the licence.

(c) Where a money-lender is any other association of individuals, not required to be registered under the Indian Companies Act, 1956, (Central Act 1 of 1956), a separate licence shall be obtained by each such individual in his name describing himself as a member of the association:

Provided that nothing contained in this sub-section shall affect the operation of Section 69 of the Indian Partnership Act, 1932 (Central Act IX of 1932)

Section 17 of the Money Lending Act is extracted hereunder:

***17. Penalty for carrying on business without license or in violation of the conditions of licence. -** Whoever carries on the business of money-lending without a licence or in violation of the conditions of the licence or*

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otherwise than in conformity with the terms and conditions of the licence shall be punished with imprisonment for a term which, in the absence of special reasons to be recorded in the judgment of the Court, shall not be less than three months but which may extend to three years and with fine which, may extend to five lakh rupees."

Section 3 of the Act, 2012 reads as under:

***3. Prohibition of charging exorbitant interest. -** No person shall charge exorbitant interest on any loan advanced by him.*

Section 9(a) of the Act, 2012 is extracted as under:

***9. Penalty** – (1) Notwithstanding anything contained in the Kerala Money-Lenders Act, 1958 (35 of 1958),-*

(a) whoever contravenes the provisions of Section 3 shall, on conviction, be punished with imprisonment for a terms which may extend to three years and also with fine which may extend to fifty thousand rupees;"

11. Going by Section 3 of the Kerala Money Lenders Act, the same mandates the need for a license to carry on or continue business of money lending and the business shall be conducted in the licensed premises by any person, firm or joint family or association of individuals. Section 17 of the Kerala Money Lenders Act, introduced with effect from

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15.10.1985, provides penalty for carrying on business without licence or in violation of the conditions of the licence and in such event, the accused shall be punished and the period of punishment shall be not less than three months, which may extend upto three years with a fine which may extend to Rs.5 lakh.

12. Coming to Section 3 of the Act, 2012, charging exorbitant interest is prohibited and it has been provided that no person shall charge exorbitant interest on any loan advanced by him. Section 9(a) provides punishment for contravention of Section 3 and on conviction, the offender shall be punished with imprisonment for a term which may extend to three years and also with fine which may extend to Rs.50,000/-.

13. Insofar as Section 7 of the Kerala Money Lenders Act is concerned, the same came into force with effect from 01.04.2019. Prior to that Section 7(1) reads as under:

> *"(1) No money-lender shall charge interest on any loan at a rate exceeding two per cent above the maximum rate or interest charged by commercial banks on loans granted by them:*
>
> *Provided that money-lender shall be entitled to charge a minimum of one rupees as interest on any transaction:*
>
> *Provided further that the Government*

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> *may specify, by notification, the rate of interest under sub-section (1) from time to time.”*

7. On perusal of the final report, the specific allegation is that, the 1st petitioner runs money lending business without a licence. The prosecution materials even remotely do not suggest, *prima facie* that the 1st petitioner had a money lending business. The facts of the case would show that, the 1st petitioner had given Rs.6 Lakh as loan to the de facto complainant and her husband after getting security documents. Thereafter, when the said sum was demanded on the premise of default in repayment, this crime was registered. The prosecution materials in no way suggest that the 1st petitioner either runs money lending business or that he had given loan for any exorbitant interest. In fact, those allegations are confined to the oral version of the de facto complainant and her husband, who are defaulters of the loan, admittedly borrowed from the 1st accused.

8. In view of the matter, none of the offences are made out, *prima facie*. It is true that carrying on business of

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money lending without a licence or in violation of the conditions of the licence or otherwise than in conformity with the terms and conditions of the licence shall be punished. Similarly, Section 18 of the Act, 1958 provides that, *whoever contravenes any of the provisions of this Act or of any rule made thereunder or of any terms or conditions of a licence granted or deemed to be granted thereunder or makes a claim or a statement which is false or which he does not believe to be true shall if no other penalty is elsewhere provided for in this Act for such contravention, be punished with fine which may extend to twenty five thousand rupees.*

9. Law does not say that a mere giving of hand loan on one or two occasions, even though after obtaining some surety documents, could be couched under the caption 'money lending'. In order to establish running of money lending business, one or two instances of advancing loan alone are insufficient. If such a proposition is laid, it is difficult for the people to get hand loans in cases of emergency and nobody would extend their helping hands, afraid of the penal consequences hidden in the Act of 1958 and Act of 2012. This would lead to societal imbalance. In order to say that a person is

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doing money lending business, the prosecution shall collect materials for the same, otherwise no offence of money lending said to have been committed, *prima facie*. That is to say, unless the prosecution records show that there are umpteen numbers of loan given by the offender for exorbitant interest, *prima facie*, none of the offences would attract. In the instant case, none of the offences are made out, *prima facie,* and therefore, quashment as sought for, is liable to succeed.

In the result, this Crl.M.C. stands allowed. All further proceedings in C.C.No.1797/2017 on the files of the Judicial First Class Magistrate Court-I, Aluva, arose out of Crime No. 3099/2017 of Aluva East Police Station, Ernakulam, against the petitioners herein, stand quashed.

Sd/-
A. BADHARUDEEN
JUDGE

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APPENDIX OF CRL.MC 2948/2023

PETITIONERS' ANNEXURES

Annexure A1	**THE TRUE COPY OF THE PETITION DATED 15-07-2017 FILED BY THE 1ST PETITIONER AGAINST THE 2ND RESPONDENT BEFORE THE S.H.O., ALUVA POLICE STATION**
Annexure A2	**TRUE COPY OF THE DISCHARGE SUMMARY OF THE SON OF THE 1ST PETITIONER DATED 27/01/2017**
Annexure A3	**THE CERTIFIED COPY OF THE FIR AND FIS IN CRIME NO.3099/2017 OF ALUVA EAST POLICE STATION DATED 03/08/2017**
Annexure A4	**THE CERTIFIED COPY OF THE FINAL REPORT WITH STATEMENT OF WITNESSES IN CRIME NO.3099/2017 OF ALUVA EAST POLICE STATION DATED 10-11-2017**
Annexure A5	**THE CERTIFIED COPY OF THE SEARCH MEMO AND SEARCH LIST DATED 4-8-2017 SUBMITTED BY THE POLICE IN CRIME NO.3099/2017 OF ALUVA EAST POLICE STATION**

RESPONDENTS' ANNEXURES : NIL