



2025:KER:77612

Crl.M.C.No.6685/2019

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

TUESDAY, THE 21ST DAY OF OCTOBER 2025 / 29TH ASWINA, 1947

CRL.MC NO. 6685 OF 2019

FIR AND FINAL REPORT IN CRIME NO.1348/2018 IN CC NO.811 OF
2019 OF BALARAMAPURAM POLICE STATION PENDING BEFORE THE
JUDICIAL MAGISTRATE OF FIRST CLASS -III, NEYYATTINKARA,

PETITIONERS/ACCUSED:

- 1 BIJU BALAKRISHNAN,
AGED 54 YEARS
S/O.BALAKRISHNAN, NARAYANA MANDIRAM, ALUVILA,
BALARAMAPURAM, THIRUVANANTHAPURAM - 695 501.
- 2 JAISON THOMAS,
AGED 52 YEARS
YESHODARA BHAVAN, BALARAMAPURAM P.O.,
THIRUVANANTHAPURAM RURAL, KERALA -695501.

BY ADVS.
SRI.R.V.SREEJITH
SMT.G.MAHESWARY

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.
- 2 ANIL MARANGOLI THOMAS,
AGED 47 YEARS, S/O.THOMAS MATHEW, MARANGOLI HOUSE,
EDAVATTOM, THALAYOLAPPARAMBU, KOTTAYAM - 686605.

BY ADVS.
SMT.L.JYOTHY KUMARI
SHRI.A.JANI (KOLLAM)
SHRI.G.SIVASANKAR



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2

SMT.N.RAJI
SRI.S.SREEKUMAR (SR.)
SRI.RENJITH GEORGE, SR.PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 16.10.2025, THE COURT ON 21.10.2025 PASSED THE FOLLOWING:

**ORDER**

Accused Nos.1 and 2 in C.C No.811/2019 on the files of the Judicial First Class Magistrate Court-III, Neyyattinkara have filed this petition under section 482 Cr.P.C to quash the proceedings against them in the said case. The offences alleged are under Sections 406 and 420 read with Section 34 I.P.C.

2. The prosecution case is summarised as follows:

The petitioners fraudulently and dishonestly induced the second respondent/de facto complainant to believe that if he financed the business of transportation of sand, rocks, boulders etc. from Thoothukkudy to Chennai, he would be provided with the profit share of Rs.1.5 Lakhs per month. Believing the above assurance of the petitioners, the second respondent/de facto complainant joined the business of the accused and advanced a total amount of Rs.79,63,000/- for that business. However, the petitioners did not honour their assurance to provide profit share as agreed. That apart, it was found that the landed property in the name of the first petitioner, which was offered as security for the amount advanced by the second respondent, was subject to encumbrance with the KSFE



Kudappanakkunnu Branch in connection with chitty transactions and loans availed by the first petitioner. The petitioners also obtained four cheque leaves for the amount of Rs.5,00,000/- each from the second respondent undertaking that metals would be supplied for the aforesaid value, but did not abide by the above undertaking as well. Thus, the petitioners are alleged to have committed the aforesaid offences.

3. In the present petition, the petitioners would contend that none of the offences alleged against them are attracted in the facts and circumstances of the case. According to the petitioners, the transaction with the second respondent is purely of civil nature, and hence they are not liable to be proceeded against for the offences alleged against them in this case.

4. Heard the learned counsel for the petitioners, the learned counsel for the second respondent/de facto complainant and the learned Public Prosecutor representing the State of Kerala.

5. Annexure-III is the copy of the partnership deed dated 10.08.2017 executed between the second respondent and the first petitioner in connection with the joint venture of business which they



proposed to commence. It is made clear in Annexure-III that the role of the second respondent is only as a financier, and that it is for the first petitioner to carry out the business operations of transportation and supply of sand and other earth products. The aforesaid partnership agreement also contains the provision for payment of remuneration at the rate of Rs.1,50,000/- to the second respondent. As per the relevant clause relating to security, it is stated in Annexure-III that the landed property of the first petitioner mentioned thereunder has been pledged to enable the second respondent to recover the unpaid dues and make good the breach of agreement, if any, by the first petitioner.

6. Normally, the aforesaid partnership agreement and the nature of the business transactions evidenced by it, partake the character of contractual obligations of civil nature. However, the situation here is different since it has been revealed that the landed property of the first petitioner which he offered as security for the amounts advanced by the second respondent, was found to have been encumbered with the KSFE in connection with the chitty and loan liability of the first petitioner, making it impossible for the second



respondent to proceed against the said property for the realisation of the unpaid dues. Coupled with the above aspect, the failure of the first petitioner to provide the profit share as agreed, and to deliver the consignment of metals which he promised to supply after getting cheques worth Rs.20,00,000/- from the second respondent, would make the transaction one of dubious nature.

7. It is pertinent to note that the conduct of the first petitioner offering as security his landed property which was subjected to encumbrance and liability, without disclosing the aforesaid liability, itself reveal that from the very inception the first petitioner intended to deceive the second respondent. The facts and circumstances of the case, as revealed from the prosecution records would also make it clear that the first petitioner has dishonestly misappropriated the huge amount which he obtained from the second respondent with the false promise that he would provide the profit share at the rate of Rs.1,50,000/- per month to the second respondent. Thus, the offences under Sections 420 and 406 I.P.C alleged in the final report are clearly made out as against the first petitioner. However, it is pertinent to note that none of the prosecution records would bring



home the aforesaid offences as against the second petitioner. Apart from the mere fact that the second petitioner is a signatory as a witness to Annexure-III partnership agreement, there is absolutely nothing on record to show his involvement in the alleged acts of cheating and criminal breach of trust. It is not possible to say that the act of the second petitioner signing Annexure-III partnership agreement as a witness would disclose his complicity in the offences alleged in this case. Apart from the mere statements of the second respondent/de facto complainant that both the petitioners had induced him to believe that they would provide profit shares @ Rs.1,50,000/- per month and failed to abide by the above assurance, there is nothing to fasten the second petitioner with the criminal liability alleged in this case. Thus, it has to be held that the prayer of the second petitioner to quash the proceedings against him deserves to be allowed, but the request in the above regard from the part of the first petitioner, cannot be allowed.

In the result, the petition stands allowed in part as follows:

i) The proceedings against the second petitioner/second accused in C.C No.811/2019 on the files of the Judicial First Class



Magistrate Court-III, Neyyattinkara which arose out of Crime No.1348/2018 of Balaramapuram Police Station, are hereby quashed.

ii) The prayer of the first petitioner to quash the proceedings against him in the said case, stands disallowed.

iii) The learned Magistrate shall proceed with the case as against the first petitioner/first accused.

(sd/-)

G. GIRISH, JUDGE

jsr



APPENDIX OF CRL.MC 6685/2019

RESPONDENT ANNEXURES

Annexure R2 (a) TRUE COPY OF THE ARBITRATION AWARD DATED 19-3-2024,

Annexure R2 (b) TRUE COPY OF THE DEPOSITION OF THE PETITIONER HEREIN, I.E., BIJU BALAKRISHNAN

PETITIONER ANNEXURES

ANNEXURE I TRUE COPY OF THE FIR IN CRIME NO.1348/2018 OF BALARAMAPURAM POLICE STATION.

ANNEXURE II TRUE COPY OF THE FINAL REPORT SUBMITTED BEFORE THE JUDICIAL 1ST CLASS MAGISTRATE COURT-III, NEYYATTINKARA AS C.C.NO.811/2019.

ANNEXURE III TRUE COPY OF THE PARTNERSHIP DEED DATED 10/08/2017 EXECUTED BETWEEN THE 1ST PETITIONER AND THE 2ND RESPONDENT.