



2026:KER:12313

CRL.MC NO. 10446 OF 2025

1

“C.R.”

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 10TH DAY OF FEBRUARY 2026 / 21ST MAGHA, 1947

CRL.MC NO. 10446 OF 2025

AGAINST THE ORDER/JUDGMENT DATED IN CC NO.1311 OF 2020
OF JUDICIAL MAGISTRATE OF FIRST CLASS -II, THRISSUR

PETITIONER/ACCUSED:

NOUSHAD,
AGED 54 YEARS
S/O NJONDATHPARAMBILL MUHAMMED,
KIZHUPPILLIKKARA, DESOM & VILLAGE, THRISSUR TALUK,
PIN - 680702

BY ADV SRI.P.K.SAJEEV

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031
- 2 JA ISSA ,
AGED 51 YEARS
W/O THULUVANCHERY ABDULMAJEED, KIZHUPPILLIKKARA, DESOM
& VILLAGE, THRISSUR TALUK, PIN - 680702

BY ADVS.
SRI.SAIJO HASSAN
SHRI.SANGEETH MOHAN



2026:KER:12313

CRL.MC NO. 10446 OF 2025

2

OTHER PRESENT:

PP.SRI.M.P.PRASANTH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
10.02.2026, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**“C.R.”****C.S.DIAS, J.**

CRL.MC NO. 10446 OF 2025

Dated this the 10th day of February, 2026**ORDER**

The petitioner is the accused in C.C.No.1311/2020 on the file of the Court of the Judicial First-Class Magistrate-II, Thrissur ('Trial Court', for short) on a complaint filed by the 2nd respondent alleging the commission of the offence punishable under Section 138 of the Negotiable Instruments Act ('N.I Act').

2. The substance of the accusation in the complaint is that the cheque issued by the petitioner in discharge of a legally enforceable debt got dishonoured due to "insufficiency of funds" in the petitioner's bank account. Despite receiving the statutory notice demanding payment of the cheque amount, the petitioner failed to pay the amount.

3. The petitioner has approached this Court,



invoking its inherent jurisdiction, to quash the complaint on the ground that the dispute between the parties has amicably settled in mediation, and has culminated in a decree in O.S.No.2380/2020 filed by the 2nd respondent before the Court of the Additional Munsiff, Thrissur, for recovery of money based on the very same transaction.

4. As per the terms of the agreement, the petitioner has agreed to pay a sum of Rs.9,00,000/- to the 2nd respondent within three years from 11.01.2023, failing which the amount would carry interest at 6% per annum. It was further agreed that the 2nd respondent would withdraw the criminal complaint. The petitioner contends that in view of the compromise decree, the criminal proceedings cannot be continued and that the 2nd respondent's remedy, if any, is confined to executing the decree.

5. I have heard the learned counsel for the petitioner, the learned Public Prosecutor and the learned



counsel for the 2nd respondent.

6. The learned counsel for the petitioner contends that once the parties have settled their dispute through mediation, the settlement has been recorded by the civil court and a decree is passed, then the parties are bound by the decree. He argues that continuing the prosecution would amount to an abuse of the process of the law. Reliance is placed on the decisions of the Hon'ble Supreme Court in **Ruchi Agarwal v. Amit Kumar Agrawal and others** [2005 KHC 469], **Seshaiah B.V. v. State of Telangana** [2023 (1) KHC 611], **Gimpex Pvt. Ltd (M/s.) v. Manoj Goel** [2021 (6) KHC 177] and the decisions of this Court in **Thomas and Another v. State of Kerala and Another** [2016 KHC 206] and **Mathew Daniel v. Leena Mathew** [2022 (5) KHC 433] in support of his contentions.

7. On the contrary, the learned counsel for the 2nd respondent vehemently opposes the Criminal



Miscellaneous Case. He contends that the civil suit and the criminal complaint are distinct and independent proceedings. The decree passed in the civil suit does not automatically obliterate the criminal liability arising under Section 138 of the NI Act. He further submits that the petitioner has not complied with the terms of the settlement, because he has failed to pay the agreed amount within the stipulated time period, i.e., by 11.01.2026. It is without complying with the conditions in the agreement and decree that the petitioner has approached this Court. The 2nd respondent, however, is willing to withdraw the complaint if the decree amount is paid.

8. The 2nd respondent had simultaneously instituted both the civil suit and the criminal complaint. It is also admitted that the reference to mediation was made only in the civil suit and not in the complaint pending before the Trial Court.



9. Section 89 of the Code of Civil Procedure, 1908, provides for the settlement of disputes outside the court, including through mediation.

10. In exercise of powers under Section 122 read with Section 89(2)(d) of the Code, this Court has framed the Civil Procedure (Alternative Dispute Resolution) Rules, 2008. A settlement arrived at in mediation in a civil proceeding becomes enforceable only after it is accepted by the court, recorded, and a decree is passed.

11. As per sub-rule (e) of Rule 5 of the Rules, if all parties opt and agree to mediation, the Court shall refer the matter to mediation. Rule 24 deals with the settlement agreement, and Rule 25 lays down the procedure for recording the settlement agreement and passing a decree.

12. In the case at hand, the settlement agreement was recorded only by the Civil Court and a decree was passed in the suit. The complaint was neither referred to mediation nor was any compromise reported before the



Trial Court. The criminal proceedings thus continue to subsist independently.

13. An offence under Section 138 of the NI Act is complete on the failure of the drawer to make payment within the statutory period after receipt of the demand notice. The mere existence of a compromise decree in a civil suit does not *ipso facto* render the criminal prosecution non-maintainable, particularly when the terms of settlement themselves contemplate withdrawal of the complaint only upon fulfilment of specified conditions. It is also to be remembered that a settlement agreement in a mediation proceeding does not have the effect of an award passed under the Legal Services Authorities Act, 1987.

14. This Court, in **Sreelal v. Murali Menon and another** [2014 (3) KHC 316], has exhaustively laid down the law on how complaints filed in connection with offences under Section 138 of the N.I. Act have to be dealt with by the Courts on the parties arriving at a settlement



in mediation proceedings.

15. Admittedly, the petitioner has not complied with the terms of the settlement within the agreed time. Having failed to honour his obligations under the compromise decree, he cannot now seek to quash the complaint. The decisions relied upon by the learned counsel for the petitioner do not lay down a proposition that a settlement in collateral civil proceedings, without compliance of its terms, would automatically warrant quashing of the criminal proceedings under Section 138 of the NI Act. Thus, the said decisions are irrelevant and inapplicable to the facts of the present case.

16. It is trite that the inherent powers of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, are to be exercised sparingly, with circumspection, and only to prevent abuse of the process of court or to secure the ends of justice.

17. In the facts and circumstances of the case, I am



2026:KER:12313

CRL.MC NO. 10446 OF 2025

10

not persuaded to hold that the continuation of the prosecution amounts to abuse of process.

In the above conspectus, I find no merit in this Criminal Miscellaneous Case, and the same is accordingly dismissed.

Sd/-

C.S.DIAS, JUDGE

SCB/dkr



APPENDIX OF CRL.MC NO. 10446 OF 2025

PETITIONER ANNEXURES

- Annexure A1 TRUE COPY OF THE COMPLAINT IN C.C. NO. 1311/2020 ON THE FILES OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, THRISSUR
- Annexure A2 TRUE COPY OF THE PLAINT IN O.S. NO. 2380/2020 ON THE FILES OF THE II ADDITIONAL MUNSIF COURT, THRISSUR
- Annexure A3 TRUE COPY OF THE DECREE DATED 16.02.2023 IN O.S. NO. 2380/2020 ALONG WITH THE MEDIATION AGREEMENT DATED 11.01.2023 ON THE FILES OF THE II ADDITIONAL MUNSIF COURT, THRISSUR