

"C.R"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 11TH DAY OF NOVEMBER 2022 / 20TH KARTHIKA, 1944

CRL.MC NO. 4535 OF 2014

CRMC 1188/2014 OF DISTRICT COURT & SESSIONS COURT, THRISSUR

PETITIONERS :

- 1 P.T.PRASANNAKUMAR,
AGED 44 YEARS, S/O.THANKAPPAN,
MANAGING PARTNER OF M/S.ADITYA FINANCE,
DOOR NO.II/74, NEAR PUTHUR CHURCH,
PUTHUR P.O., TRICHUR DISTRICT,
RESIDING IN PUTHANCHIRAKKAL HOUSE,
H.NO.XV/63, NAMBIAR ROAD, PUTHUR P.O.,
TRICHUR DISTRICT.
- 2 C.V.PRAKASAN,
AGED 48 YEARS, S/O.VELUKUTTY,
PARTNER OF M/S.ADITYA FINANCE,
DOOR NO.II/74, NEAR PUTHUR CHURCH,
PUTHUR P.O., TRICHUR DISTRICT,
RESIDING IN CHULLIPARAMBIL HOUSE,
H.NO.XII/597, NAMBIAR ROAD, PUTHUR P.O.,
TRICHUR DISTRICT.
- 3 V.V.MANOJ KUMAR,
AGED 52 YEARS, S/O.VASUDEVAN,
PARTNER OF M/S.ADITYA FINANCE,
DOOR NO.II/74, NEAR PUTHUR CHURCH,
PUTHUR P.O., TRICHUR DISTRICT,
RESIDING IN VAIKKATTIL HOUSE,
H.NO.XIII/382, ERAVIMANGALAM P.O.,
TRICHUR DISTRICT.
- 4 DINIL KUMAR N.N.,
AGED 43 YEARS, S/O.NARAYANAN,
M/S.ADITYA FINANCE, DOOR NO.II/74,
PUTHUR CHURCH, PUTHUR P.O.,
TRICHUR DISTRICT,
RESIDING IN NELLIPARAMBIL HOUSE,

H.NO.XIII/522, NAMBIAR ROAD,
PUTHUR P.O., TRICHUR DISTRICT.

5 MUKESH V.V.,
AGED 41 YEARS, S/O.VELAYUDHAN,
PARTNER OF M/S.ADITYA FINANCE,
DOOR NO.II/74, NEAR PUTHUR CHURCH,
PUTHUR P.O., TRICHUR DISTRICT,
RESIDING IN VELUTHEDATHPARAMBIL HOUSE,
H.NO.III/616, KOZHUKKULY P.O.,
TRICHUR DISTRICT.

6 V.S.MURALI,
AGED 48 YEARS, S/O.SANKARAN,
PARTNER OF M/S.ADITYA FINANCE,
DOOR NO.II/74, NEAR PUTHUR CHURCH,
PUTHUR P.O., TRICHUR DISTRICT,
RESIDING IN VARANTHARAPPILLY HOUSE,
H.NO.II/603, MOORKKANIKKARA,
KOZHUKKULY P.O., TRICHUR DISTRICT.

7 SUMESH K.S.,
AGED 30 YEARS, S/O.SURENDRAN,
PARTNER OF M/S.ADITYA FINANCE,
DOOR NO.II/74, NEAR PUTHUR CHURCH,
PUTHUR P.O., TRICHUR DISTRICT,
RESIDING IN KALIYANGARA HOUSE,
H.NO.XII/519, NAMBIAR ROAD,
PUTHUR P.O., TRICHUR DISTRICT.

BY ADV SRI.PEARSON S.FERNANDEZ

RESPONDENTS :

- 1 THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, KOCHI - 31.
- 2 THE CITY POLICE COMMISSIONER,
THRISSUR CITY, TRICHUR - 680 021.
- 3 THE SUB INSPECTOR OF POLICE,
OLLUR POLICE STATION, OLLUR,
TRICHUR DISTRICT - 680 001.

CRL.MC NO. 4535 OF 2014

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BY ADV SRI.T.ASIF ALI (DIRECTOR GENERAL OF
PROSECUTION)

BY SMT.M.K. PUSHPALATHA, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
11.11.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

"C.R."

BECHU KURIAN THOMAS, J.

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CrI.M.C.No.4535 of 2014

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Dated this the 11th day of November, 2022

ORDER

The practice of money lending, according to historians dates back thousands of years. The roots of the said pursuit is traced to the ancient Mesopotamia, regarded by many as the fount of earliest civilizations of the world. Petitioners who were indulging in this ancient practice, allegedly in accordance with law, suddenly found themselves on its wrong side. Alleging that petitioners are doing their business without authority, their offices were raided and documents seized. In this proceeding under Section 482 of the Cr.P.C., petitioners question the crime registered against them relating to their business of money lending.

2. Petitioners are partners of one M/s.Aditya Finance engaged in the business of hire purchase. On 04.06.2014, the police conducted a search of their establishment under an investigation named "Operation Kubera" and registered a crime as FIR No.1191/2014 before the Ollur Police Station, Thrissur after seizing 598 documents. Petitioners were indicted as accused, alleging offences punishable under Section 420 of the Indian Penal Code, 1860 (IPC for short), apart from Section 18A of the

Kerala Money Lenders Act, 1958 (for short, 'the KML Act') as well as Section 3 r/w Section 9 of the Kerala Prohibition of Charging of Exorbitant Interest Act, 2012 (for short' the Interest Act').

3. The FIR alleged that the accused were conducting their business without any legal authorisation, or permissions and that they were cheating the borrowers, apart from charging exorbitant interest for vehicle loans after collecting blank signed cheques, documents and even stamped papers, thus committing the offences alleged.

4. Petitioners alleged that the F.I.R. is registered without any basis and also that no offence under any law for the time being in force is made out against the petitioners. Petitioners claim that interference is essential to serve the ends of justice which is the paramount consideration of the inherent power of this Court.

5. On 06.07.2015, by a detailed order, all further proceedings pursuant to the F.I.R. was stayed by a learned Single Judge of this Court. In the meantime, contrary to the order of stay, a final report was allegedly filed, ignoring the order of stay issued by this Court. Since the final report was filed contrary to the order of stay, the said report cannot be taken into reckoning, and it is eschewed and ignored from consideration.

6. Sri. Pearson S.Fernandez, the learned counsel based his submissions on the invalidity of the FIR by relying upon the provisions of the Act and contended that petitioners had a valid licence as

contemplated under the statute and therefore the very edifice on which the FIR was registered is faulty. It was further submitted that the offences under Section 420 IPC as well as those under the Interest Act are not made out as none had a case that petitioners had cheated anyone or were charging exorbitant interest. The learned counsel also contended that the investigation code-named 'Operation Kubera' was an eyewash as against the petitioners, and that they were conducting their business in accordance with law but were harassed and their business destroyed overnight. According to Adv. Pearson, initiation of the criminal proceeding against the petitioners, was due to malafides, and since none of the offences alleged are made out, the FIR itself ought to be quashed.

7. Smt.M.K.Pushpalatha, the learned Public Prosecutor opposed the contentions and submitted that the offences alleged are matters which are required to be investigated upon and that quashing of an FIR under S.482 Cr.P.C. ought to be resorted to only very sparingly. It was further submitted that even though the final report was filed without noticing the stay order granted by this Court and the same has no legal validity, nothing prevents the Investigating Officer from continuing with the investigation after disposal of this case. It was also argued that the contentions now raised in this case are matters which can be decided only after completing investigation and after trial. The learned Public Prosecutor also submitted that prima facie, the ingredients of the offences alleged are made out, and hence the inherent powers of this Court under

S. 482 should not be invoked.

8. I have considered the rival contentions.

9. The crime has been registered against the petitioners alleging that they are conducting a money lending business without a license and in violation of S.18A of the KML Act apart from S.420 of the IPC and S.3 r/w Section 9 of the Interest Act.

10. It is not disputed that petitioners had obtained a licence under the KML Act, from the year 2009-10, as is evident from the RTI information produced as Ann.A11. The said licence was renewed every year till 2015-16, without a break. On the date the establishment was searched, i.e. 04.06.2014, petitioners' application for renewal of licence for the year 2014-15 was pending consideration, as is evident from Ann.A9 receipt for renewal of registration issued by the Department of Commercial Taxes. A perusal of Ann. A9 reveals that the application for renewal of license for the year 2014-15 was submitted and its fee was paid by the petitioners on 29.04.2014. It is also noticed that as per Ann.A2, the money lenders' licence to M/s. Aditya Finance was renewed for the year 2014-15 w.e.f. 01.04.2014. The licence was thus valid from 01.04.2014 till 31.03.2015. Of course, though the application was submitted on 29.04.2014, order of renewal was issued only on 09.06.2014, but with retrospective effect.

11. Section 3(1) of the KML Act deals with the necessity of obtaining a license to conduct the business in money lending. For the

purpose of easier comprehension, section 3(1) is extracted as below

“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.

12. Section 4 of the Act deals with grant and refusal of licences under the Act. Sub-section (3) of Section 4 deals with the refusal of license, while sub-section (4A) deals with grant of licence with retrospective effect, and sub-section (7) deals with a situation where the refusal to renew a licence is not communicated before the expiry of the current licence. For the purpose of easier comprehension, the relevant provisions are extracted as below:

4. Grant and refusal of licences. -

(1) Every application for a money-lender's licence shall be in writing and shall be made to the licensing authority and in the manner prescribed under this Act.

(2) xxxxx

(3) The licensing authority may by order in writing refuse to grant a licence if such authority is satisfied—

(a) that the applicant has not complied with the provisions of this Act or the rules made thereunder in respect of an application for the grant of a licence; or

(b) that the applicant has made willful default in complying with or knowingly acted in contravention of any requirement of this Act; or

(c) that the applicant has—

(i) knowingly participated in or connived at any fraud or dishonesty in the conduct of or in connection with the business of money-lending; or

(ii) been found guilty of an offence under Chapter XVII or Chapter XVIII of the Indian Penal Code (Central Act XLV of 1860); or

(iii) been found guilty of an offence under section 11 or section 13

(d) that the application is made within six months of the cancellation of the licence.

(4) Every order of the licensing authority under sub-section (3) shall be communicated to the applicant in such manner as may be prescribed

(4A) The licensing authority may, if it is satisfied that an applicant could not apply for a licence under this Act, for reasons beyond his control, within the period referred to in sub-section (1) of Section 3, grant a licence with retrospective effect on realising a penalty not exceeding the prescribed licence fee.

(5) Every licence granted under this Act shall, subject to the provisions of sub-section (7), expire on the last day of the year in which it was granted.

(6) A licence granted under sub-section (2) may be renewed from year to year and the provisions of sub-section (1) to (5) shall apply in relation to the renewal of a licence as they apply in relation to the grant of a licence.

(7) If orders refusing to renew a licence are not communicated to a money-lender by the licensing authority before the expiry of his current licence, the money-lender shall, notwithstanding such expiry, be deemed to have a valid licence till orders are received by him on his application for renewal.

(8) Nothing in this section shall be deemed to disentitle a money-lender whose licence has expired or has not been renewed from taking

steps to recover any loan advanced during the period when the licence was in force."

13. A reading of the above statutory provisions indicate that as per section 3(1), a person must possess a license to conduct business in money lending in Kerala. However, by virtue of the proviso to section 3(1), if a person has applied for a license, there is no prohibition to carry on or continue his business until orders on his application are issued. The proviso to Section 3(1) of the KML Act is significant in the instant case, as, petitioners had admittedly applied for a license on 29-04-2014 and on the date of search of its establishment on 04-06-2014, the application was pending consideration.

14. Further, section 4 of the KML Act also indicates that the licensing authority is not only empowered to grant a licence with retrospective effect but also that if the refusal to renew a licence is not communicated before the expiry of the earlier licence, the licensee shall be deemed to possess a valid licence, till orders are received on the application for his licence. However, the deemed licence under Section 4(7) of the Act will apply only if the application is submitted prior to the expiry of the licence. Though the statutory provisions do not prescribe that the application must be filed before the expiry of the licence period, if a licensee wants to gain the benefit of a deemed licence under Section 4(7), then the application should have been filed before the expiry of the earlier licence. Thus petitioners cannot claim to possess a deemed licence

on the date of search.

15. A perusal of the statute reveals that even if the renewal application was not submitted before expiry of the licence, by virtue of the proviso to Section 3(1) of the KML Act, petitioners had the right to conduct the business from 29.04.2014.

16. Even otherwise, sub-clause (4A) of Section 4 takes care of instances when a licensee fails to apply before the expiry of the licence. In such an instance, the licensing authority is vested with the power to issue the renewed licence with a retrospective date. Thus, in view of Section 4(4A), which grants power to the licencing authority to grant licence with retrospective effect, it can be concluded that even if on 04.06.2014, the petitioners did not possess the licence, by virtue of having submitted the application for renewal of the licence for the period 2014-15 and the subsequent grant of licence for the period i.e. from 01.04.2014 till 31.03.2015 as mentioned in Ann.A2, petitioners were undoubtedly entitled to conduct money lending business as per KML Act, on the date of registration of the FIR. Since petitioners were legally entitled to conduct business on the said date, the allegation of conducting business of money lending without authority cannot arise.

17. It is pertinent to observe that unfortunately, licensing authorities fail to act on the applications received by them, on time. A licensee of a running business establishment who had applied for renewal of his license, cannot be asked to wait indefinitely until the authority

takes a decision. If the licensee has to stop his running business until a decision is taken, it will disrupt the business. This can also pave the way for corrupt practices and will be giving a premium to the ineptitude of the licensing authority. The Statute has taken care of such situations through the proviso to Section 3(1) and the deeming license under S.4(7) apart from the retrospective operation of license under S.4A of the KML Act. This Court cannot ignore those statutory mandates.

18. Yet another offence alleged against the petitioners is under Section 18A of the KML Act, which deals with certain acts of pawnbrokers to be punishable. The Investigating Officer is obviously under a misconception that the vehicle finance provided by the petitioners amounts to a 'pawn'. The word 'pawnbroker' is defined in Section 2(7A) to mean a person who carries on the business of taking goods and chattels in pawn for a loan. A hire purchase contract is one in which the vehicle belonging to the owner is given under a hire purchase to another person with an endorsement on the registration certificate about the existence of a hire purchase. The vehicle is used and possessed by the registered owner of the vehicle, who is only a hirer and the *de jure* ownership of the vehicle vests with the financier. The concepts of pawn and pawnbroker do not arise in the instant case, and therefore Section 18A of the Act also does not apply.

19. As regards the offence under Section 420 of the IPC is

concerned, there is no specific allegation in the FIR, other than a vague statement that the borrowers were cheated. The ingredients of the offence under Section 420 IPC as defined in Section 415 are not seen made out from the allegations and therefore, the offence under Section 420 is also not made out in the FIR.

20. Under the Interest Act, the term 'exorbitant interest' is defined to mean an interest charged in excess of what is permitted under Section 7 of the KML Act. Under the said KML Act, a money lender is entitled to charge interest up to 18% simple interest per annum and a further 2% as processing charges. None has a case that petitioner had charged from any person, exorbitant interest, either in violation of the KML Act or contravening the provisions of the Interest Act. Though it is alleged that exorbitant interest was charged from one Mr.Rakesh, son of Thankachan, at the time of registration of the FIR, no such complaint was in existence to enable the Investigating Officer to proceed against the petitioners alleging the commission of the said offence. Petitioners contention that the said Sri.Rakesh had paid the entire interest and cleared his liability and had not even raised any grievance or complaint against them, cannot be ignored, especially since the said contention is supported by Ann. A13.

21. Further, the allegation that there were blank cheques and other signed papers seized from the petitioner is of no consequence as an offence. This Court had, in the decision in **Yohannan M.M and Another v. State of Kerala** [2019 (5) KHC 908] referred to an earlier decision

and observed as follows : *"Learned counsel for the petitioners cited an unreported decision of this Court in A. M. Gopalan v. Sub Inspector of Police (order dated 25/07/2016 in Crl. M. C. No. 4204/2016) in which it has been observed as follows:*

"The learned Public Prosecutor has fairly conceded that the statements of the witnesses concerned, have revealed that they were subscribers of various chitties being conducted by the petitioner and at the time when the auction amounts in the chitty were obtained, such documents were obtained from them by the petitioner as security for the chitty amount. Even if such documents are seized from the possession of the petitioner, unless and until it is shown that he is conducting money lending, either S.420 IPC or S.17 of the Kerala Money Lenders Act cannot be attracted. Here, even if securities are obtained through whatever means for disbursing chitty amounts, S.17 of the Kerala Money Lenders Act can be attracted only in a case wherein a person has been conducting money lending without licence or he has been violating the terms of licence for money lending."

What is stated above squarely applies to the facts of the present case."

22. Apart from the above, it is apposite to refer to the judgment in WPC No.21534 of 2004 dated 06.08.2002 wherein a Division Bench of this Court had observed as follows :

"we are of the view that (sic) under the guise of receiving the money if the financiers indulge in any activity which is punishable under the I.P.C. police can register cases and take appropriate action. All the same, there are many persons who are conducting money lending business strictly in accordance with law and in accordance with the provisions of the Kerala Money Lenders Act, 1958. If complaint is received, police will have to conduct enquiries and only if they are satisfied that offence has been committed, police would register cases

and proceed in accordance with law. Police cannot characterise all persons who are conducting money lending business as 'blade mafia' and apprehend their agents and register cases against them. In other words, each complaint has to be examined on its merits and only if there is some basis in the complaint, police would act."

The observations extracted above, indicates that, if a complaint is received, the police will have to act provided they are satisfied that an offence has been committed. The corollary of the said observation is that in the absence of any complaint, police cannot meddle with a legally run business.

23. In the instant case, there is not only absence of any complaint from any person regarding the conduct of business by the petitioners, but by virtue of operation of the KML Act, petitioners were entitled to conduct the business without any interference as they were in legal possession of a valid licence on the date of search.

24. In the decision in **State of Haryana and Others v. Bhajan Lal and Others** [1992 Supp (1) SCC 335], the Supreme Court had laid down the category of cases where the exercise of inherent power to quash can be resorted to. The following conclusions in the said judgment are relevant.

"1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other

materials, if any, accompanying the F. I. R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/ or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/ or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

25. Considering the entire circumstances, I am satisfied that the crime registered against the petitioners cannot, under any circumstances, whatsoever make out any of the offences alleged. The allegations in the First Information Report even if they are taken at their face value and accepted in its entirety, do not prima facie constitute any offence.

Further, the allegations in the First Information Report and other materials accompanying it do not disclose a cognizable offence, justifying an investigation by the police. I am satisfied that this is an eminently fit case to terminate the criminal proceedings against the petitioners.

26. In view of the above discussion, I am satisfied that Ann. A3 FIR in Crime No.1191/2014 of Ollur Police Station is an abuse of the process of the court and is, therefore, liable to be quashed. Ordered accordingly.

This Crl.M.C. is allowed.

Sd/-

BECHU KURIAN THOMAS, JUDGE

RKM

APPENDIX OF CRL.MC 4535/2014

PETITIONERS' ANNEXURES :

- ANNEXURE-A1 : TRUE COPY OF THE PARTNERSHIP DEED EXECUTED AMONGST THE PETITIONERS
- ANNEXURE-A2 : TRUE COPY OF THE MONEY LENDING LICENSE NO.32080483236 ISSUED BY THE INSPECTING ASSISTANT COMMISSIONER, IAC OFFICE, MATTANCHERRY, COCHIN - 2 TO M/S.ADITYA FINANCE
- ANNEXURE-A3 : TRUE COPY OF THE FIR NO.1191 OF 2014 REGISTERED BY THE THIRD RESPONDENT AGAINST THE PETITIONERS
- ANNEXURE-A4 : TRUE COPY OF THE ORDER DT.13.6.14, PASSED BY THE HON'BLE SESSIONS JUDGE OF THRISSUR IN CRL.M.C. NO.1188 OF 2014
- ANNEXURE-A5 : TRUE COPY OF THE REPRESENTATION DT.20.5.14 SUBMITTED BEFORE THE HON'BLE HOME MINISTER OF KERALA, BY THE STATE ASSOCIATION OF THE PETITIONERS AND OTHERS.
- ANNEXURE-A6 : TRUE COPY OF THE JUDGEMENT PASSED BY THE HON'BLE HIGH COURT OF KERALA ON 23.7.14 IN WPC NO.17739 OF 2014
- ANNEXURE-A7 : TRUE COPY OF THE JUDGEMENT PASSED BY THE HON'BLE HIGH COURT OF KERALA ON 17.6.14 IN WPC 13784 OF 2014.
- ANNEXURE-A8 : TRUE COPY OF THE MONEY LENDING LICENSE ISSUED TO M/S. ADITYA FINANCE BY THE INSPECTING ASSISTANT COMMISSIONER, IAC OFFICE, MATTANCHERRY, COCHIN - 2 ON 25.11.2009
- ANNEXURE-A9 TRUE COPY OF THE RECEIPT FOR REGISTRATION RENEWAL E-PAYMENT, RENEWED ON 29.04.2014

- ANNEXURE-A10 COPY OF THE LETTER DATED 07.11.2014
ISSUED BY THE SECRETARY, PUTHOOR GRAMA
PANCHAYAT
- ANNEXURE-A11 COPY OF THE LETTER ISSUED BY THE
INSPECTING ASSISTANT COMMISSIONER,
THRISSUR IN REPLY TO RTI APPLICATION OF
THE PETITIONER
- ANNEXURE-A12 COPY OF THE ORDER OF THIS COURT IN WP(C)
NO.21534/2004 PASSED BY THIS HON'BLE
COURT.
- ANNEXURE-A13 COPY OF THE LEDGER EXTRACT OF THE LOANEE
- RAKESH, S/O. THANKACHAN, NAADUKANI
HOUSE, KANNARA P.O., MAINTAINED BY M/S.
ADITHYA FINANCE.