

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

THURSDAY, THE 6TH DAY OF MARCH 2025 / 15TH PHALGUNA, 1946

CRL.MC NO. 9018 OF 2019

AGAINST CC NO.2446 OF 2016 OF JUDICIAL MAGISTRATE OF FIRST CLASS

-II, THIRUVANANTHAPURAM

PETITIONERS/ACCUSED 1 & 2:

- 1 JEEVAN SEBASTIAN, AGED 32 YEARS, S/O REJI JOSEPH, PROPRIETOR, M/S. ANGELS AGENCIES, VELLANADU P.O., NEDUMANGAD, THIRUVANANTHAPURAM - 695 543, RESIDING AT M/S. ANGEL AGENCIES NEAR KEPCO, VETTUCAUD CHURCH ROAD, BEACH P.O., THIRUVANANTHAPURAM - 695 007.
- 2 M/S. ANGELS AGENCIES, VELLANADU P.O., NEDUMANGAD, THIRUVANANTHAPURAM - 695 543, AND ALSO HAVING ADDRESS AT M/S. ANGEL AGENCIES NEAR KEPCO, VETTUCAUD CHURCH ROAD, BEACH P.O., THIRUVANANTHAPURAM - 695 007, REPRESENTED BY ITS PROPRIETOR JEEVAN SEBASTIAN.

BY ADV BIJU ABRAHAM

RESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, COCHIN - 682 031.
- 2 M/S. SOUTHSORE ICE CREAMS, PARUTHIKUZZHI, THIRUVANANTHAPURAM - 695 541, REPRESENTED BY ITS MANAGER, MR. ANU P. THOMAS, AGED 32 YEARS, S/O THOMAS P.S.

BY ADVS.
SRI.PRASUN.S
SRI.N.A.RETHEESH
SRI.SANGEETHARAJ.N.R, PUBLIC PROSECUTOR
SRI.PRASUN.S FOR R2

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06.03.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



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ORDER

Accused Nos.1 and 2 in C.C.No.2446/2016 on the files of Judicial First Class Magistrate Court-II, Thiruvananthapuram have filed this petition under Section 482 of the Code of Criminal Procedure, 1973 (*in short, 'Cr.PC'*), to quash the proceedings against them in the said case which originated upon a private complaint filed by the second respondent alleging the commission of offence under Sections 405, 406, 420 and 120B I.P.C read with Section 34 I.P.C.

2. The complaint filed by the second respondent before the learned Magistrate is summarised as follows:

The complainant is an establishment engaged in the business of manufacture of ice creams and other frozen foods. The complainant is marketing ice creams, ice lollies and other frozen foods under the brand name 'Lazza' and 'Uncle John Ice Creams' which is a brand of M/s.Teejan Foods (P) Ltd and M/s.Jojo Frozen Foods (P) Ltd. The accused Nos.1 and 2 (petitioners) were the Sales Officers cum Distributors of the complainant at Thiruvananthapuram city. As part of the business strategy of the complainant, it was decided to entrust 37 sophisticated machines like deep freezers to



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accused Nos.1 and 2 on condition that the said equipment would only be used to store, market and sell the product of the complainant company alone. The aforesaid equipments worth Rs.11,88,700/- were given to the accused Nos.1 and 2 at a subsidised rate of Rs.4,27,378/- upon the undertaking that the accused would utilise the said equipments only in accordance with the aforesaid assurance for the promotion of business of the items marketed by the complainant. But, the accused 1 and 2, along with the other accused, hatched a criminal conspiracy with a dishonest and fraudulent intention of causing wrongful loss to the complainant and to have wrongful gain to them, and used the above equipments to store, market and distribute the products of other companies. The accused also defaced and sold several of the aforesaid equipments without the consent of the complainant company and thus caused damage to the complainant company financially and otherwise. The accused also divulged and disclosed the confidential information and data related to the sale strategy and marketing information of the complainant to other fellow competitors causing substantial damage to the business of the complainant. Thus, the accused are alleged to have committed the aforesaid offences.



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3. The learned Magistrate, after recording the sworn statement of the complainant and one witness, took the complaint into files and issued summons to the accused to answer the charges under Sections 405, 406, 420 and 120B read with Section 34 I.P.C.

4. In the present petition, the petitioners would contend that none of the aforesaid offences are attracted in the facts and circumstances of the case. According to the petitioners, the deep freezers were purchased by them by expending money from their own pocket, and that the complainant is not having the independent claim or right over the said items. It is further pointed out that the only remedy available for the complainant/second respondent is to proceed by way of civil remedies for breach of contract.

5. Heard the learned counsel for the petitioners and the learned counsel for the second respondent.

6. The averments in the complaint would disclose that there was entrustment of deep freezers and other machineries on subsidised rate with the petitioners/accused by the second respondent on the basis of their assurance that the said property would be utilised in the manner as agreed with the second respondent in connection with the sale promotion of the products of



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the second respondent. The sworn statements given before the learned Magistrate by the Manager of the complainant, and another witness, would further reveal the above entrustment of property with the petitioners/accused. It is the further case of the second respondent that the petitioners hatched a criminal conspiracy with the other accused to fraudulently and dishonestly use the above machinery against the terms of entrustment, for gaining unjust enrichment. The sworn statements given by the Manager of the complainant establishment and another witness would also disclose the aforesaid objectionable acts on the part of the accused. Thus, the allegation in the complaint about the criminal conspiracy and criminal breach of trust on the part of the petitioners/accused is brought out in the enquiry conducted by the learned Magistrate under Section 200 Cr.PC. True that it is doubtful whether the facts disclosed in the aforesaid enquiry would bring home the offence of cheating as envisaged under Section 420 IPC. However, it is a matter to be decided by the learned Magistrate at the stage of framing charges. At any rate, it is not possible to brush aside the complaint preferred by the second respondent, and the preliminary evidence adduced in the enquiry under Section 200 Cr.PC as one relating to



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breach of contract coming under the purview of civil dispute. It is well-settled that many cases of breach of contract are interlinked with the culpability pertaining to cheating and criminal breach of trust. The mere fact that the dispute has got a colour of breach of obligation of civil nature, is not a reason to stifle a criminal prosecution initiated by the aggrieved party, when the ingredients of the offence of criminal breach of trust and criminal conspiracy are brought out. When viewed in the above perspective, the challenge raised by the petitioners herein against the maintainability of the proceedings initiated by the learned Magistrate against them, cannot be said to be sustainable. Accordingly, I find that the prayer of the petitioners to quash the proceedings against them in C.C.No.2446/2016 on the files of Judicial First Class Magistrate Court-II, Thiruvananthapuram, is devoid of merit.

In the result, the petition is hereby dismissed.

(sd/-)

G. GIRISH, JUDGE

jsr/DST



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APPENDIX OF CRL.MC 9018/2019

PETITIONER ANNEXURES

- ANNEXURE A1** A CERTIFIED COPY OF THE COMPLAINT FILED AS C.M.P. NO. 2916/2016 NOW PENDING AS CC NO. 2446/2016 ON THE FILES OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT - II, THIRUVANANTHAPURAM.
- ANNEXURE A2** A TRUE COPY OF THE AGREEMENT EXECUTED BETWEEN THE COMPLAINANT AND THE 2ND ACCUSED THROUGH THE 1ST ACCUSED DATED 28-09-2013.
- ANNEXURE A3** A TRUE COPY OF THE SUMMONS RECEIVED BY THE 1ST PETITIONER IN C.C. NO. 2446/2016 FROM THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, THIRUVANANTHAPURAM.
- ANNEXURE A4** A TRUE COPY OF THE SUMMONS RECEIVED BY THE 2ND PETITIONER IN C.C. NO. 2446/2016 FROM THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, THIRUVANANTHAPURAM.