

**Devadathan and Others Vs. State of Kerala and Another**

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**Court :** Kerala

**Decided On :** Feb-07-2012

**Judge :** P.S. Gopinathan

**Appeal No. :** CRMC.No. 3808 of 2011

**Appellant :** Devadathan and Others

**Respondent :** State of Kerala and Another

**Judgement :**

1. In this petition under Section 482 of the Code of Criminal Procedure, petitioners, who are accused in C.C. 1392 of 2010 on the file of the Judicial Magistrate of the First Class II, Cherthala, seek an order to quash Annexure A3 final report alleging offence under Section 420 read with Section 34 of the Indian Penal Code, with a plea that no offence is made out even by the averments in the final report.

2. Responding to the notice issued, the defacto complainant entered appearance. I have heard Sri. V.L. Shenoy, learned counsel, appearing for the petitioner and Sri. Denizen Komath, the learned counsel appearing for the second respondent. Perused the documents including Annexure 3.

3. In Annexure 3 what is stated is that petitioners entered into an agreement for sale in respect of five cents of property comprised in Resurvey No.242/14/2A of Thanneermukkom Thekku Village and obtained a sum of Rs. 1,50,000/- as advance consideration. But they failed to execute the sale deed.

4. There is no whisper in the final report that there was any inducement to part with the money or that the advance amount was parted in pursuance to the inducement. The only allegation is breach of agreement for sale. Breach of agreement for sale would not constitute an offence under Section 420 IPC. It appears that the trial court took cognizance and issued process without applying the mind. The order taking cognizance for offence under Section 420 r/w 34 PPC and issuing process on a final report alleging breach of agreement for sale is an abuse of process. Therefore, the petitioners are justified in seeking an order to quash Annexure A3 final report. I find no reason to decline this petition.

In the result, this petition is allowed. All further proceedings in Annexure A3 would hereby stand quashed.

Learned counsel appearing for the petitioners fairly submitted that the petitioners are prepared to execute the document or to return the amount with interest at the rate of 10%. Though the defacto complainant was given an option to get the sale deed executed, he avoided on some lame excuse. In the above circumstances, the petitioners are directed to return the amount with 10% interest.

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