IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

Crl.MC.No. 994 of 2015 ()

CC 108/2014 of CHIEF JUDICIAL MAGISTRATE COURT, KOTTAYAM
CRIME NO. 587/2014 OF KOTTAYAM EAST POLICE STATION , KOTTAYAM DISTRICT
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PETITIONER/2ND ACCUSED:

V.V.KURIAN, AGED 40 YEARS, S/O.VARKEY
VATTAMALA HOUSE, ETTUMANOOR EAST.P.O
KOTTAYAM.

BY ADV. SRI.S.MANU

RESPONDENTS:
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1. **LEELAMMA SEBASTIAN, KOKKATTU**
   MUNDACKAL HOUSE, MANALUNKAL.P.O
   PALLICKATHODU, KOTTAYAM, PIN-686503.

2. **STATE OF KERALA**
   REPRESNTED BY PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. JUSTIN JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 994 of 2015 ()

APPENDIX

PETITIONER'S EXHIBITS

ANNEXURE-I TRUE COPY OF THE STATEMENT IN WRITING SUBMITTED BY THE IST RESPONDENT U/S 313 OF CR PC

ANNEXURE-II CERTIFIED COPY OF THE JUDGMENT IN ST.NO.116/13 OF THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT II, ETTMANOOR

ANNEXURE-III TRUE COPY OF THE COMPLAINT SUBMITTED TO THE DEPUTY SUPERINTENDENT OF POLICE BY THE IST RESPONDENT

ANNEXURE-IV CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO.587/2014 OF THE KOTTAYAM EAST POLICE STATION

ANNEXURE-V TRUE COPY OF THE SEARCH MEMO DATED 25.06.2014

ANNEXURE VI CERTIFIED COPY OF THE STATEMENT GIVEN BY THE IST RESPONDENT ON 2.6.2014

ANNEXURE VII TRUE COPY OF THE STATEMENT DATED 24.7.2014

ANNEXURE -VIII TRUE COPY OF THE STATEMENT DATED 24.7.2014 OF KURIAN.

RESPONDENTS' EXHIBITS

NIL

TRUE COPY P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.994 of 2015

Dated this the 16th day of October, 2015

O R D E R

A prosecution involving the offences under Sections 13 and 17 of the Kerala Money Lenders Act is sought to be quashed on the ground that the allegations in the final report submitted by the police, or in the complaint, will not in any manner constitute the essentials of the offences alleged. The complaint in this case was made by the 1st respondent herein, who had admittedly borrowed an amount of Rs.5 Lakhs from the accused. At the time of borrowal, the complainant had also handed over some blank cheques, blank stamp papers, and promissory notes. When the complainant failed to make payment as agreed, the accused brought a prosecution against her under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the N.I.Act'). On full trial, the learned Judicial First Class Magistrate-II, Ettumanoor convicted the 1st respondent under Section 138 of the N.I.Act, and sentenced her to undergo simple imprisonment for six months. She was also ordered to pay a compensation of Rs.4 Lakhs to the petitioner herein, who is the complainant in the said prosecution. The said judgment of conviction was pronounced by the learned Magistrate on 28.05.2014. On the very same day, when the 1st respondent herein received a conviction under Section 138 of the N.I.Act, she thought of making a complaint against the complainant as a counterblast. Accordingly, the police registered a crime on the said complaint, and after investigation submitted final report under Sections 13 and 17 of the Kerala Money Lenders Act.

2. It is well settled that casual instances of money lending will not attract a prosecution under the Kerala Money Lenders Act. Under Section 13 or 17 of the Kerala Money Lenders Act, only a money lender as defined under the law can be punished. Section 2(7) of the Kerala Money Lenders Act defines "money lender" as a person, whose main or subsidiary occupation is the business of advancing and realising loans, or acceptance of deposits in the course of such business, but does not include a bank or a co-operative society, or the Life Insurance Corporation of India, or the Industrial Credit and Investment Corporation of India, or the Industrial Finance Corporation, or the State

Financial Corporation established under the State Financial Corporation Act, or any institution established by or under an Act of Parliament or the Legislature of a State. Thus, the definition is very clear as to who can be called a money lender. An individual lending money otherwise than as a money lender as defined under the law, cannot be prosecuted under the provisions of the Kerala Money Lenders Act.

3. The final report does not show that the petitioner herein is a money lender as defined under the law, or that money lending is his main or subsidiary occupation. On a particular occasion, the 1st respondent happened to borrow Rs.5 Lakhs from the petitioner, and when she failed to return the amount, the petitioner brought a prosecution against her under Section 138 of the N.I.Act. He brought such prosecution when the cheque issued by the 1st respondent was bounced due to insufficiently of funds. The 1st respondent faced the said prosecution for months, and till the last day of judgment, she did not think of filing a complaint against the petitioner. Much thought is not required to suspect the truth of the complaint. The petitioner's case that the

prosecution is a counterblast to the prosecution brought against the defacto complainant under Section 138 of the N.I.Act, can be accepted without any hesitation. She was given notice in this proceedings. But she opted to remain absent. There is reason to believe that she is not interested in the prosecution, or that she knows what will ultimately happen, if the prosecution proceeds under the Kerala Money Lenders Act.

2. I find that the petitioner herein cannot be said to be a money lender as defined under the law, and he cannot be prosecuted under the Kerala Money Lenders Act, just because he happened to lend an amount of Rs.5 Lakhs on one occasion to the defacto complainant. It appears that this has been the trend in Kerala, that even on a complaint alleging just one instance of money lending as part of a private affair between individuals, the police would register crime under the Kerala Money Lenders Act, and without obtaining any advice from anybody, the police would mechanically submit final report under the Kerala Money Lenders Act. This will have consequences, and such a prosecution where the accused will not satisfy the definition of "money lender" under

the law, will definitely amount to abuse of legal process.

In the result, this petition is allowed. The prosecution against the petitioner herein in C.C.No.108/2014 of the Chief Judicial Magistrate Court, Kottayam will stand quashed under Section 482 Cr.P.C.

Sd/-

P. UBAID, JUDGE

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// True Copy // P.A. to Judge