

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

Crl.MC.No. 270 of 2014 ()

**CC.NO. 290/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT - I,
THIRUVANANTHAPURAM**

PETITIONER/2ND ACCUSED :

**SHEEJA MOL, AGED 28 YEARS
W/O.SAJITH KUMAR, GSS BHAVAN, MUTTACUAD
VENGANOOR P.O., THIRUVANANTHAPURAM.**

**BY ADVS.SRI.BIJU BALAKRISHNAN
SMT.PRINCY XAVIER**

RESPONDENTS/COMPLAINANT & 1ST ACCUSED :

- 1. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. JOJAN MATHEW, AGED 58 YEARS
VETTICAUD HOUSE, KERALADITHYAPURAM
THIRUVANANTHAPURAM.**
- 3. SAJITH KUMAR, AGED 38 YEARS
GSS BHAVAN, MUTTACUAD, VENGANOOR P.O.
THIRUVANANTHAPURAM, PIN-695 523.**

**R1 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE
R2 BY ADV. SRI.D.SAJEEV**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 28-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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...2/-

APPENDIX

PETITIONERS' ANNEXURES :

- ANNEXURE 1 : CERTIFIED COPY OF THE COMPLAINT IN CC NO. 290/2013
PENDING BEFORE THE JUDICIAL 1ST CLASS MAGISTRATE
COURT-I, THIRUVANANTHAPURAM.**
- ANNEXURE 2 PHOTOSTAT COPY OF THE PARTNERSHIP DEED.**
- ANNEXURE 3 PHOTOSTAT COPY OF THE COMPLAINT DATED 22.8.2012
BEFORE THE SUB INSPECTOR OF POLICE, NEDUMANGAD
POLICE STATION.**
- ANNEXURE 4 PHOTOSTAT COPY OF THE RECEIPT OF COMPLAINT DATED
22.8.2012.**
- ANNEXURE 5 PHOTOSTAT COPY OF THE LAWYER NOTICE DATED 10.9.2012
ISSUED ON BEHALF OF THE 2ND RESPONDENT.**
- ANNEXURE 6 PHOTOSTAT COPY OF THE COMPLAINT DATED 18.9.2012
LODGED BEFORE THE SUB INSPECTOR OF POLICE,
NEDUMANGAD POLICE STATION.**
- ANNEXURE 7 PHOTOSTAT COPY OF THE ACKNOWLEDGMENT RECEIPT OF
COMPLAINT DATED 18.9.2012.**
- ANNEXURE 8 PHOTOSTAT COPY OF THE REPLY NOTICE.**

RESPONDENT'S ANNEXURES : NIL

//TRUE COPY//

P.S. TO JUDGE

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[CR]

B. KEMAL PASHA, J.

.....
CRL.M.C. No. 270 of 2014
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Dated this the 28th day of October, 2015

ORDER

In discharge of the liability of a partnership firm, its Managing Director, who is the first accused and 3rd respondent herein, has issued the cheque in question. The 2nd accused is another partner of the firm. Strangely enough, the partnership firm is not arraigned as the accused.

2. Normally, in case of civil liability, for suing a partnership firm, two or more partners can be sued within the meaning of Order XXX Rule 1 of the Code of Civil Procedure Code, 1908. At the same time, as far as the offence under Section 138 of the N.I. Act is concerned, in such a case, a complaint has to be filed under Section 142 of the N.I. Act, in conformity with Section 141(1) of the N.I. Act. Section 141(1) of the N.I. Act says:

“If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.”(Emphasis Supplied)

3. Therefore, the persons responsible for the conduct of the Company, as well as the Company, should be the accused in the case. As per explanation(a) to Section 141(2) of the N.I.Act, “‘Company’ means any body corporate and includes a firm or other association of individuals.”

4. When as per Section 141(1) of the N.I. Act, the company should be an accused, in cases wherein it is a Company, going by the explanation, in the case of a partnership firm, the firm should also be an accused in the

case. As per explanation(b) to Section 141(2) of the N.I. Act, “‘Director,’ in relation to a firm, means a partner in the firm.” Over and above the partners, who are responsible for the conduct of the business of the partnership firm, the partnership firm should also be a party to the complaint. When the partnership firm is not arraigned as an accused, the complaint fails and therefore, Annexure 1 complaint in C.C.No.290/13 on the file of the Judicial First Class Magistrate's Court-I, Thiruvananthapuram as against the petitioner, is liable to be quashed.

In the result, this CrI.M.C. is allowed and all further proceedings in Annexure 1 complaint in C.C.No.290/13 on the file of the Judicial First Class Magistrate's Court-I, Thiruvananthapuram, as against the petitioner, are hereby quashed.

Sd/- B. KEMAL PASHA, JUDGE.

UI/- // true copy //

P.S. to judge.