

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

Cr1.MC.No. 1780 of 2015

AGAINST THE ORDER IN C.M.P NO.493/2015 OF THE JUDICIAL FIRST
CLASS MAGISTRATE COURT-II, ALUVA DATED 09-03-2015

CRIME NO. 116/2015 OF ELAMAKKARA POLICE STATION , ERNAKULAM

PETITIONER/PETITIONER:

C.M.SADIQ, AGED 52 YEARS,
S/O. LATE MUHAMMED, RESIDING AT H. NO. 48/439-F
'MINNAH', PUNNAKKAL, ELAMAKKARA P.O,
ERNAKULAM DISTRICT - 682 026.

BY ADV. SRI.C.S.UMAR FAROOK

RESPONDENTS/RESPONDENT:

1. STATION HOUSE OFFICER
ELAMAKKARA POLICE STATON, ERNAKULAM - 682 017.
2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA - 682 031.

R1 & R2 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 19-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 1780 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

A1 - COPY OF CRL.M.P NO. 493/15 IN CRIME NO. 116/15 OF ELAMAKKARA
POLICE STATION.

A2 - COPY OF THE CHEQUE BEARING NO. 236743 FOR R. 11,00,000/-
(RUPEES ELEVEN LAKHS ONLY) DRAWN ON FROM ICICI BANK LTD, KOCHI
BRANCH.

A3- COPY OF THE FIRST INFORMATION REPORT IN CRIME NO. 116/15
DT.19.2.15 BEFORE THE 1ST RESPONDENT.

A4 - CERTIFIED COPY OF THE ORDER IN CRL.MP NO. 493/15 IN CRIME
NO. 116/15 OF ELAMAKKARA POLICE STATION.

RESPONDENTS' ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.1780 of 2015

Dated this the 19th day of March, 2015

O R D E R

The petitioner herein obtained a cheque for ₹ 11,00,000/- from one Risa Bava. He learned from the Bank Manager that Risa Bava had no sufficient funds in his account at that time. However, he did not present the cheque for collection. Without and before getting the cheque bounced under the law, the petitioner made a complaint against Risa Bava before the police. Police immediately registered a case under Sections 420 and 406 of the Indian Penal Code. During investigation, the cheque in question was seized by the police and produced in court. The petitioner made application under Section 451 of the Code of Criminal Procedure before the Judicial First Class Magistrate Court II, Aluva for interim custody of the cheque. The learned Magistrate declined the request saying that the petitioner may alter the cheque if it is released to him. The said order dated 9.3.2015 is under challenge.

2. On hearing both sides, and on a perusal of the

impugned order, I find that the petitioner's request was improperly declined by the court below. It is submitted that the validity of the cheque will expire on 14.4.2015. The petitioner now wants to present it before the Bank for collecting the amount due. That right, as a person in possession of a negotiable instrument, cannot be denied. It will suffice that a certified copy of the cheque is produced for trial purposes in the cheating case. I fail to understand how the petitioner would alter the cheque when he wants to use it for collecting the amount due from the accused. The reason stated by the learned Magistrate is unacceptable.

In the result, this Criminal Miscellaneous Case is allowed. The impugned order will stand set aside. The court below is directed to release the cheque to the petitioner, on his producing a certified copy of the cheque in question. If a copy is applied for, it shall be given without delay.

**P.UBAID
JUDGE**

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