

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

CrI.MC.No. 1455 of 2013

CC 1093/2009 of J.M.F.C.-IV,KOZHIKODE

PETITIONER(S)/ACCUSED NO.4:

SUJITH.P,
C/O.K.V.M.MENON, A-5, INDRAPRASTHAM
KUMAR NAGAR, CHEVAYUR.P.O, CALICUT-17.

BY ADV. SRI.V.V.NANDAGOPAL NAMBIAR

RESPONDENT(S)/STATE & COMPLAINANT:

1. ABDUL JABBAR.C.K,, AGED 42 YEARS
S/O.C.K.MAMU, 'RARIRAM', BEYPORE
KOZHIKODE,
REPRESENTED BY POWER OF ATTORNEY HOLDER BASHEER AHMED
S/O.ABDU RAHIMAN, AGED 36 YEARS, "P.M.HOUSE"
ST.VINCENT COLONY, KALATHINKUNNU AMSOM DESOM
KOZHIKODE TALUK.(NADAKKAVU POLICE STATION LIMIT).

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

BY ADV. SRI.K.M.FIROZ
BY ADV. SMT.M.SHAJNA
BY ADV. SRI.S.KANNAN FOR R1
BY PUBLIC PROSECUTOR SMT.M.MADHUBEN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 20-
07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CrI.MC.No. 1455 of 2013

APPENDIX

ANNEXURES

ANNEXURE-1 A TRUE COPY OF THE COMPLAINT IN CC.1093/09 ON THE FILE OF FIRST CLASS JUDICIAL MAGISTRATE COURT-IV,KOZHIKODE.

ANNEXURE-2 A TRUE COPY OF THE RELEVANT EXTRACTS OF FORM NO.32 SUBMITTED BEFORE THE REGISTRAR OF COMPANIES.

ANNEXURE-3 A TRUE COPY OF THE CERTIFICATE DATED 04.11.2009 ISSUED BY CHARTERED ACCOUNTANT.

ANNEXURE-4 A TRUE COPY OF THE COMMON JUDGMENT IN CC.541/2009 AND CONNECTED CASES.

TRUE COPY

P.S TO JUDGE

RAJA VIJAYARAGHAVAN.V. J

Crl.M.C. 1455 of 2013

Dated 20th July, 2015

ORDER

1. This petition is filed u/s 482 of the Code of Criminal Procedure by the petitioner, who is the 4th accused in C.C.1093 of 2009 on the files of the Judicial Magistrate of First Class-IV, Kozhikode. The said complaint is instituted by the 1st respondent alleging dishonour of cheque issued on behalf of a Private Limited Company by name E-COMM Compu Shoppe Ltd.

2. The learned counsel for the petitioner has produced Annexure-1 which is the complaint filed before the learned Magistrate by the 1st respondent. A perusal of the complaint would reveal that, five accused are arrayed therein and the petitioner herein is arrayed as 4th accused. It is seen from Annexure-1 complaint that the 2nd respondent had business dealings with the accused and the 1st accused is the Managing Director of M/s.E-COMM Compu Shoppe Ltd., and accused Nos.2 to 4 are

the Directors and the 5th accused is the Chief Executive Officer of the said Company. There is an averment that the accused are the persons who are looking after the day-to-day affairs of the said Company.

3. The learned counsel for the petitioner submitted that the Apex Court in **Aneeta Hada v. Godfather Travels and Tours Pvt. Ltd. (2012 (4) SCALE 644)**, has held that for maintaining a prosecution u/s 141 of the Act, arraigning the Company as an accused is imperative. It is the contention of the learned counsel that the Directors cannot be prosecuted without the Company being arraigned as accused.

4. Further more, the learned counsel for the petitioner has also invited the attention of this Court to Annexure-2 which are the extracts of Form-32 reports revealing that the accused had ceased to be the Directors of the Company even prior to the transaction. According to the

learned counsel, as the petitioner had ceased to be the Director of the Company even prior to issuance of the cheque, he could not have been held liable. Reliance was placed on **Pooja Ravinder Devidasani v. State of Maharashtra and Anor. (AIR 2015 SC 675)**, to substantiate this proposition. Annexure-4 is the judgment by the Judicial Magistrate of First Class-IV, Kozhikode in C.C.541/2009 in which also the learned Magistrate has considered the several cases initiated by the 1st respondent herein against the Company and has acquitted the Directors on the ground that the Company was not impleaded in the case as an accused. It is also pointed out that the petitioner is not a signatory of the cheque.

5. The learned counsel for the 1st respondent, faced with the legal pronouncement of the Apex Court has also conceded that in Annexure-1 complaint filed before the learned Magistrate, the Company has not been arrayed as

accused. It was argued that there are specific averments in the complaint and the facts of the case are not similar.

6. After hearing the learned counsel for the petitioner and the learned counsel appearing for the 1st respondent and in view of the law laid down by the Apex Court, I am of the considered view that the contention raised by the petitioner is to be upheld. Putting the criminal law into motion is not a matter that can be taken lightly. Before a Magistrate taken cognizance of an offence under Section 138 of the Negotiable Instruments Act, and thereby makes a person responsible for a criminal Act, the said Court has to ensure strict compliance with the statutory requirements. I am of the considered view that the proceedings against the petitioner is nothing but a pure abuse of the process of law. For the aforesaid reasons, I am of the view that, this is a fit case for quashing the complaint.

7. In the result, Crl.MC stands allowed. All further proceedings in C.C.1093 of 2009 on the files of the Judicial Magistrate of First Class-IV, Kozhikode, is quashed.

Sd/-

RAJA VIJAYARAGHAVAN.V.
Judge

MrCs

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