

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

Crl.MC.No. 2615 of 2015 ()

**CMP. NO.93/2015 IN CC. NO.49/2014 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT-VII, ERNAKULAM.**

PETITIONER(S):

**SREENIVAS PAI, AGED 55 YEARS,
S/O.GOVINDA PAI, 12/322, RG. PAI ROAD,
PANDIKKUDY, KOCHI -682 002,
NOW CONDUCTING THATTUKADA AT PULLEPPADY ROAD,
PADMA JUNCTION, ERNAKULAM- 682 035.**

BY ADV. SRI.R.VENUGOPAL.

RESPONDENT(S):

- 1. JAYARAM M.N., S/O.NATARAJAN,
AGED 44 YEARS, RESIDING AT HOUSE NO.44/2266,
KALOOR, COCHIN- 682 017.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, COCHIN -682 031.**

**R1 BY ADVS. SRI.K.C.ELDHO,
SRI.JIJO THOMAS,
SRI.MALLENATHAN.M.,
SRI.ANEESH JAMES,
SRI.ANIL R.NATH.**

R2 BY PUBLIC PROSECUTOR SMT.P. MAYA.

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 14-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:

- ANNEXURE A1:** TRUE COPY OF THE COMPLAINT DATED 29.12.2013.
- ANNEXURE A2:** TRUE COPY OF THE DEPOSITION OF RESPONDENT.
- ANNEXURE A3:** TRUE COPY OF THE COMPLAINT OF THE PETITIONER
BEFORE THE COMMISSIONER OF POLICE
DATED 15.06.2014.
- ANNEXURE A4:** TRUE COPY OF THE CMP.NO.93/2015 FILED BY THE
PETITIONER.
- ANNEXURE A5:** TRUE COPY OF THE OBJECTION FILED BY THE
RESPONDENT.
- ANNEXURE A6:** CERTIFIED COPY OF THE ORDER IN CMP.NO.93/2015.

RESPONDENT'S ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

B. KEMAL PASHA, J.

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Crl.M.C. No.2615 of 2015
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Dated this the 14th day of October, 2015

ORDER

The order passed by the court below in C.M.P.No.93/2015 of the Judicial First Class Magistrate's Court-VII Ernakulam in C.C.No.49 of 2014 is under challenge. The case before the court below was as a result of a private complaint filed under Section 142 of the N.I. Act alleging an offence under Section 138 of the N.I. Act.

2. According to the complainant, Ext.P1 cheque was issued, which on presentation returned dishonoured. The complainant was examined as PW1 before the court below. In chief examination, he has filed an affidavit stating that the cheque in question was filled up and signed by the accused in his presence. In the cross examination the contentions

resorted to by the accused is that an amount of Rs.80,000/- only was received, and at that time when the amount was borrowed, a blank signed cheque leaf was obtained by the complainant from the accused. It is his further case that the said cheque leaf was altered as Ext.P1 cheque and got it dishonoured on presentation. The further contention of the accused is that the amounts borrowed from the complainant was returned and therefore, the liability was discharged.

3. It seems that a demand notice was caused to be issued by the complainant to the petitioner. The address noted in the notice as well as the postal cover is the same address as shown in the complaint as well as in the Crl.M.C. No reply was issued.

4. According to the learned counsel for the petitioner, the petitioner had not received the notice. It seems that the notice issued in the correct address was not claimed and the same was not obtained and that was the reason why the notice returned unserved. When the notice

was issued in the correct address, admittedly that of the petitioner, there is no meaning in contending that he was residing elsewhere.

5. Even if the cheque is subjected to examination by a handwriting expert, and even if it is shown that the writings in the cheque are not in the handwriting of the petitioner, it will not improve the case of the petitioner in any manner in the present case. Considering the facts and circumstances of the case, I am satisfied that Annexure A6 is not liable to be interfered with.

In the result, this Crl.M.C. is dismissed.

B.KEMAL PASHA, JUDGE.

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