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

Crl.MC.No. 1698 of 2013

ST 93/2013 of J.M.F.C.-I, KANNUR

PETITIONER(S)/ACCUSED:

M.NISHANTH AGED 38 YEARS
S/O. VENUGOPAL, RESIDING AT 'DEVIKRIPA'
ELAYAVOOR UP SCHOOL ROAD, P.O VARAM
KANNUR DISTRICT - 670 594.

BY ADVS.SRI.A.K.ABDUL AZEEZ
SRI.T.K.SASINDRAN

RESPONDENT(S)/COMPLAINANT AND STATE:

1. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNKULAM - 682 031.

2. MUTHOOT FINANCE PRIVATE LIMITED
FORT ROAD BRANCH, KANNUR DISTRICT - 670 001
REPRESENTED BY ITS BRANCH MANAGER.

BY ADV. SRI.HANSON.P.MATHEW
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:

Crl.MC.No. 1698 of 2013

APPENDIX

ANNEXURES

A1- TRUE COPY OF THE RECEIPT ISSUED BY THE 2ND RESPONDENT DATED 16.3.2007 FOR LOAN NO.0007875

A2- TRUE COPY OF THE GOLD AUCTION NOTICE DATED 2.11.2008

A3- TRUE COPY OF THE NEWSPAPER REPORTS DATED 18.4.2012 AND 15.8.2012 IN THE MALAYALA MANORAMA

A4- TRUE COPY OF THE COMPLAINT FILED U/S 138 OF THE NEGOTIABLE INSTRUMENTS ACT.

TRUE COPY

P.S TO JUDGE

RAJA VIJAYARAGHAVAN.V. J

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Crl.M.C.1698 of 2013

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Dated 20th July, 2015

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ORDER

1. The instant petition is filed u/s 482 of the Code of Criminal Procedure seeking to quash all further proceedings in S.T.93 of 2013 on the files of the Judicial Magistrate of the I Class - I , Kannur .

2. The essence of the contention raised by the petitioner is this :-

The petitioner had availed a gold loan from the 2nd respondent , a private financing company , by pledging 95.300 grams of gold. A sum of Rs.66,000/- was disbursed to the petitioner as per the 'easy personal loan Scheme' on 16.3.2007, as evidenced by Annexure-A1 receipt. Thereafter, the petitioner was offered an additional loan of Rs.29,000/- which was also availed by him. At the time of availing of the loan, 12 blank signed cheques were handed over by the petitioner to the 2nd respondent. It is submitted that, when the petitioner failed to effect re-payment of the loan amount, the gold ornaments mortgaged with the 2nd respondent was sold at 10.00 am on 27.12.2008 by the 2nd respondent after issuing Annexure-A2 notice. It is the specific case of the petitioner that, he was neither intimated about the sale proceeds obtained by the 2nd respondent after selling the mortgaged gold. Thereafter, by utilizing the blank cheque leaves handed over by the petitioner to the 2nd respondent at the time of availing of the loan, Annexure-A4 complaint was preferred before the Judicial Magistrate of First Class-I, Kannur. Since the petitioner was out of Station, he was not able to appear before the Court below and proceedings against him was transferred to the list of “Long Pending Cases” and numbered as L.P.C.71 of 2012. Later, when he appeared before court, he was remanded and now the matter is pending trial. According to the petitioner, the 2nd respondent is trying to obtain unjust enrichment by instituting false complaint after obtaining the proceeds by selling the mortgaged gold and the complaint, on the strength of the post dated cheques, was nothing but an abuse of process of Court.

3. Though notice was issued to the 2nd respondent who is the financier, and the counsel had filed vakkalath, none appeared when the case had come up for hearing.

4. It is clear from Annexure-A4 complaint filed u/s 138 of the Negotiable Instruments Act that the said complaint was instituted on the strength of three cheques dated 16.9.2007, 16.10.2007 and 16.11.2007 drawn by the petitioner on an account maintained by him with the HDFC Bank, Kannur branch. The dates seen put on the respective cheques would reveal that the cheques were issued after the date of availing of the loan by the petitioner on 16.3.2007. It is also evident from Annexure-A2 that on 27.12.2008, ie, after the dishonour of the cheques on 12.3.2008 and filing of the complaint, the 2nd respondent has sold the mortgaged gold and obtained the proceeds. If that be the case, it cannot be said that the

cheques presented are supported by consideration. If a negotiable instrument is made or drawn, without consideration, it creates no obligation of payment between the parties of transaction. Similarly, when the consideration for which a negotiable instrument was drawn has failed subsequently, then also, the instrument creates no obligation at all. In the instant case, it appears that the amount due from the petitioner was realised by the 2nd respondent by selling the mortgaged gold and that too after instituting the complaint.

5. Having regard to the entire facts and circumstances, I am satisfied that the criminal proceedings pending as against the petitioner pursuant to Annexure-A4 complaint in S.T.93 of 2013 on the files of the Judicial Magistrate of First Class-III, Kannur, is liable to be quashed. I do so.

Crl.M.C stands allowed.

Sd/-
RAJA VIJAYARAGHAVAN.V.
Judge

Mrcs

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