

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

Crl.MC.No. 2368 of 2014 ()

CC.NO. 568/2014 OF CHIEF JUDICIAL MAGISTRATE COURT ,THRISSUR

NAME AND ADDRSS OF THE PETITIONERS/ACCUSED:

1. COCHIN FOUNDATION,
1C7/24 F, THOPPILTHODI HOUSE, CHERUR DESOM,
VIYYUR VILLAGE, THRISSUR TALUK, CHERUR P.O.,
THRISSUR-680 008, REPRESENTED BY ITS SECRETARY,
SRI. T.R.SHAMSUDEEN.
2. T.R.SHAMSUDEEN, AGED 30 YEARS,
S/O. MR. K.RAHEEM, 1C7/24 F, THOPPILTHODI HOUSE,
CHERUR DESOM, VIYYUR VILLAGE, THRISSUR TALUK,
CHERUR P.O., THRISSUR-680 008.
3. ALKA SHAMSUDHEEN, AGED 28 YEARS,
W/O. MR. T.R.SHAMSUDHEEN, 1C7/24 F, THOPPILTHODI HOUSE,
CHERUR DESOM, VIYYUR VILLAGE, THRISSUR TALUK,
CHERUR P.O., THRISSUR-680 008.
4. K.RAHIM, AGED 64 YEARS,
S/O. MR. AHAMEDKUTTY, 1C7/24 F, THOPPILTHODI HOUSE,
CHERUR DESOM, VIYYUR VILLAGE, THRISSUR TALUK,
CHERUR P.O., THRISSUR-680 008.

BY ADVS.SRI.C.A.MAJEED
SRI.K.H.ASIF
SMT.RAAGA R.RAMALAKSHMI
SRI.K.J.SHARATH KUMAR

NAME AND ADDRESS OF THE RESPONDENTS/COMPLAINANT:

1. C.V. RATHEESH, AGED 50 YEARS,
S/O. VIKRAMAN, "CHIRAKUZHAY HOUSE", 7/534,
ARIMBUR GRAMA PANCHAYAT, MANAKODI DESOM,
ARIMBUR VILLAGE, THRISSUR TALUK, VELUTHUR P.O.,
THRISSUR-680 016 (ANTHIKAD POLICE STATION).

CRL.M.C.NO.2368/2014

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

**R1 BY ADVS. SRI.ASWIN GOPAKUMAR
SRI.ANWIN GOPAKUMAR**

R2 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 09-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

sts

Crl.MC.No. 2368 of 2014 ()

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEX A- PHOTOCOPY OF THE DEED OF TRUST WITH REGISTRATION NO. 473
 OF 2011.**

ANNEX B- PHOTOCOPY OF THE TRUST DEED OF COCHIN FOUNDATION.

ANNEX C- A PHOTOCOPY OF THE LAWYER NOTICE DATED 21-10-2013.

ANNEX D- A PHOTOCOPY OF THE REPLY NOTICE DATED 11-11-2013.

ANNEX E- A CERTIFIED COPY OF THE COMPLAINT DATED 07-12-2013.

RESPONDENT(S)' ANNEXURES: **NIL**

/TRUE COPY/

P.A.TO JUDGE

sts

B.KEMAL PASHA, J.

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Crl.M.C. No. 2368 of 2014

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Dated this the 9th day of October, 2015

ORDER

The petitioners are the accused in C.C.No.568 of 2014 pending before the Chief Judicial Magistrate's Court, Thrissur for the offence punishable under Section 138 of the Negotiable Instruments Act. According to the petitioners, the complainant before the court below, who is the 1st respondent herein, is one of the Trustees of the 1st petitioner Trust and therefore, he cannot initiate any action against the Trust as per Section 14 of the Indian Trusts Act, 1882. It is also contended that a portion of the amount covered by the cheque was admittedly received by the 1st respondent and that the said portion already paid was taken as loan. Whereas the remaining amounts allegedly due

were invested by the 1st respondent in the Trust. Therefore, it is not repayable.

2. The case of the complainant is that all the amounts were obtained from him as loan on interest and for the discharge of the liability in part, the cheque in question was issued, which on presentation returned dishonoured.

3. This Court is not making any observation on the merits or otherwise of the contention taken by the petitioners that the complainant is hit by Section 14 of the Indian Trusts Act, 1882. In case, the petitioners have a case that the cheque is not supported by consideration, it is for them to prove before the court below. In such case, whether the claim is barred under Section 14 of the Indian Trusts Act, 1882 also can be raised before the court below. It is for the court below to decided the said question. Presently, this Court cannot interfere with the matter as this Court cannot take evidence in the matter. The said contention is based on evidence to be adduced before the

court below. Matters being so, this Crl.M.C. is only to be closed and I do so.

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

Sd/-

B.KEMAL PASHA
JUDGE

DSV/9/10/15

// True Copy //

PA. To Judge