

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

Cr1.MC.No. 2525 of 2014 ()

(AGAINST THE ORDER/JUDGMENT IN ST 422/2013 of C.J.M., KOLLAM)
PETITIONER(S)/ACCUSED:

SINDHYA RANI.V.R.
W/O.SIVAKUMAR, PUSHPAVAILASOM BUNGLOW,
PUNNATHALA CHERRY, KOLLAM WEST VILLAGE
THIRUMULLAVARAM PO, KOLLAM 691 012.

BY ADVS.SRI.C.HARIKUMAR
SMT.C.B.ANUROOPA

RESPONDENT(S)/STATE & COPLAINANT:

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

2. SHIBU.B
EKAPARNIKA , MKRA-74, MANAYIKULANGARA,
THIRUMULLAVARAM PO, KOLLAM 691 012.

R2 BY ADV. SRI.SAJU J PANICKER
R1 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 07-
01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 2525 of 2014 ()

APPENDIX

PETITIONER(S) ' EXHIBITS

ANNEXURE A1 COPY OF THE COMPLAINT IN CMP 28718/2013 BEFORE THE CHIEF
JUDICIAL MAGISTRATE COURT, KOLLAM DATED 24/4/2013

ANNEXURE A2 COPY OF THE REPLY NOTICE ISSUED BY THE PETITIONER TO THE
NOTICE UNDER SECTION 138 DATED 3/4/2013

ANNEUXRE A3 COPY OF THE CRIME NO. 1171/2013 OF THE KOLLAM WEST POLICE
STATION, KOLLAM DATED 12/9/2013

ANNEXURE A4 COPY OF THE ORDER SHEET IN ST NO. 422/2013 OF THE CHIEF
JUDICIAL MAGISTRATE COURT, KOLLAM

RESPONDENT(S) ' EXHIBITS

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NIL

/TRUE COPY/

P.S. TO JUDGE.

P.UBAID, J.

Crl.M.C.No. 2525 OF 2014

Dated this the 7th day of January, 2015

O R D E R

The petitioner herein has been facing prosecution under Section 138 of the Negotiable Instruments Act. It is a prosecution brought by the 2nd respondent herein before the Chief Judicial Magistrate Court, Kollam. The petitioner seeks orders quashing the prosecution on the ground that she has not, in fact, executed such a cheque in question, that the complainant cannot avail the benefit of the presumption under Section 139 of the Negotiable Instruments Act, and that the cheque leaf of the petitioner handed over in some other transaction was somehow procured and mis-used by the complainant. These are all matters to be looked into and considered by the trial court. Whether the complainant is entitled to avail the presumption under Section 139 of the Negotiable Instruments Act, can be decided only by the trial court on trial, when execution of the cheque is proved. The

question of proof of execution comes only when the case goes to trial. The ground urged by the petitioner that her cheque leaf, handed over in some other transaction, was somehow procured by the complainant, is in fact a defence to be considered by the trial court during trial. Whether the petitioner had, in fact, executed the cheque in question, is also a matter to be looked into by the trial court. In short, on these grounds the prosecution cannot be quashed under Section 482 of the CrI.P.C. The petitioner will have to raise all her defences before the trial court, when the case goes to trial. On such grounds available as defence in a trial, which the trial court will have to consider, the prosecution cannot be quashed under Section 482 of the CrI.P.C.

In the result, the CrI.M.C. is dismissed.

Sd/-

P.UBAID, Judge.

dpk

/true copy/ PS to Judge.

