

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

Cr1.MC.No. 3940 of 2015 ()

CC 3083/2014 of ADDL.CHIEF JUDICIAL MAGISTRATE'S COURT,
THIRUVANANTHAPURAM

PETITIONER/1ST ACCUSED:

T.P.JALAJAMONY, AGED 49 YEARS,
W/O. RADHAKRISHNAN, KUMBALATH VEEDU, SPRA 36,
SANKARANPARA LANE, MUDAVANMUGAL, POOJAPPURA PO,
THIRUVANANTHAPURAM 695012

BY ADV. SRI.G.SUDHEER

RESPONDENTS/COMPLAINANT & STATE:

1. SURESHKUMAR,
S/O. K.PANKAJAKSHAN, KUZHIYAMPLAVIL VEEDU,
POOVARANI PO, POOVARANI VILLAGE, MEENACHIL TALUK,
KOTTAYAM DISTRICT-685 031.

2. RADHAKRISHNAN,
KUMBALATH VEEDU, SPRA 36, SANKARANPARA LANE,
MUDAVANMUGAL, POOJAPPURA PO, THIRUVANANTHAPURAM-695 001

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

R1 BY ADVS. SRI.JAI GEORGE

SMT.DAISY A.PHILIPOSE

R3 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
21-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

DSV/23/12/15

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: COPY OF THE COMPLAINT IN CC NO.3083/2014 ON THE
FILE OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT,
THIRUVANANTHAPURAM.

ANNEXURE B: COPY OF THE NOTICE ISSUED BY ADV. G.L.,
MOHANACHANDRAN DATED 12.12.2013.

ANNEXURE C: COPY OF CHEQUE IN QUESTION ISSUED BY THE ACCUSED
TO THE 1ST RESPONDENT.

ANNEXURE D: COPY OF THE ACCOUNT OPENING FORM ISSUED BY THE
MANAGER, UNION BANK OF INDIA, POOJAPPURA BRANCH.

RESPONDENTS' ANNEXURES:

ANNEXURE R1(A): COPY OF THE DEMAND NOTICE DATED 24.04.2014
ISSUED TO THE PETITIONER AND THE 2ND RESPONDENT BY THE
PETITIONER AND ITS ACKNOWLEDGMENT CARD.

// True Copy //

P.A. To Judge

DSV/23/12/15

B.KEMAL PASHA, J.

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Crl.M.C.No. 3940 of 2015

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Dated this the 21st day of December, 2015

O R D E R

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Heard the learned counsel for the petitioner and the learned counsel for the 1st respondent.

2. The case before the court below is as a result of a private complaint filed by the 1st respondent as complainant against the petitioner and her husband, who is the 2nd respondent herein as accused. According to the petitioner, in discharge of her liability of ₹43,96,000/-, the husband and wife had issued the cheque in question. The present case of the petitioner is that the transaction was between the 2nd respondent and the 1st respondent and that the cheque in question was one issued by the 2nd respondent and not by the petitioner.

3. According to the learned counsel for the 1st

respondent, the petitioner as well as her husband, who is the 2nd respondent herein had deliberately cheated and defrauded the 1st respondent and they are deliberately denying the payment of ₹43,96,000/- legally due to the 1st respondent.

4. The matter was sent for mediation. The matter has not been settled. According to the learned counsel for the 1st respondent, the wife has set up a contention that the cheque was issued by the 2nd respondent, and at the same time, there is every possibility that the 2nd respondent will set up a contention that the cheque was one issued by the petitioner herein. In this context, a premature termination of the prosecution against the petitioner cannot be entertained.

5. The learned counsel for the 1st respondent has also pointed out that even though a demand notice as contemplated under Section 138(b) of the Negotiable Instruments Act was issued to the petitioner as well as the 2nd respondent, it had evoked no response. Matters being so, the matter has to go for evidence. Let the parties face

the trial. In case, it is found that the petitioner has not issued the cheque in question, she can be absolved from criminal liability.

With the said observations, this Crl.M.C. is dismissed.

Sd/-
B.KEMAL PASHA
JUDGE

DSV/21/12/15

// True Copy //

P.A. To Judge