

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

Crl.MC.No. 3016 of 2014 ()

CC 483/2010 of JUDICIAL FIRST CLASS MAGISTRATE COURT, ADOOR

PETITIONER/2ND ACCUSED :

**R. GOPALAKRISHNA PILLAI, AGED 65 YEARS,
S/O RAMAN PILLAI, MANAPPALLIL PUTHEN VEEDU,
VETTIYAR, MAVELIKKARA.**

**BY ADVS.SRI.R.PADMAKUMAR
SRI.P.ARAVIND**

RESPONDENTS/STATE & COMPLAINANT :

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKALUM.**
- 2. MOLLY JOHN,
W/O.P.V.JOHN, VADAKKEKARA ANZAN VILLA, KULANADA.P.O.,
KOZHENCHERRY, PATHANAMTHITTA DISTRICT.**

R1 BY PUBLIC PROSECUTOR SRI. GITHESH

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 13-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

Crl.MC.No. 3016 of 2014 ()

APPENDIX

PETITIONER'S ANNEXURES :

**ANNEXURE A: COPY OF COMPLAINT DT 6TH MARCH 2010 FILED BY R2 BEFORE
THE JUDICIAL FIRST CLASS MAGISTRATE COURT NO.I, ADOOR**

RESPONDENT'S ANNEXURS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

ALEXANDER THOMAS, J.

Crl.M.C.No.3016 Of 2014

Dated this the 13th day of July, 2015.

ORDER

The petitioner is the 2nd accused in Anx-A complaint filed by the 2nd respondent alleging offences under Sec.138 of the Negotiable Instruments Act, which has led to the institution of C.C.No.483/2010 on the file of the Judicial First Class Magistrate Court-I, Adoor. The allegation is that the accused had issued cheque for Rs.50,000/- for "The Business India Group" which has been dishonoured due to lack of funds. The main contention of the petitioner-accused is that the company, The Business India Group, is not arrayed as an accused in Anx-A complaint. Therefore, in the light of various court rulings that authorized signatory alone cannot be made liable for prosecution under Sec.138 of the NI Act without arraigning the company as an accused in the complaint. The petitioner places reliance on the ruling of the Apex Court in Aneeta Hada v. Godfather Travels and Tours (P) Ltd. reported in 2012 (2) KLT 736 (SC). In the light of these aspects, the petitioner seeks quashment of the impugned criminal proceedings.

Crl.M.C.No.3016 Of 2014

2. Though service of notice on contesting 2nd respondent (complainant) has been completed, there is no appearance for the 2nd respondent. Heard Sri.R.Padmakumar, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent-State of Kerala.

3. The specific imputation in paragraph 1 of Anx-A complaint is that the accused are the Managing Director of the Business India Group of Companies and that the accused had issued the cheque dated 4.10.2009 for Rs.50,000/- from the account maintained by the Business India Group with the Catholic Syrian Bank, Mavelikkara Branch. Therefore, it can be clearly inferred from the averments in Anx-A complaint that the liability was owed by the company M/s. Business India Group and it is from the account of that company, the cheque in question was issued and that the accused are Managing Director of the said company, etc. Therefore, as rightly contended by the petitioner the issue as to whether such a complaint alleging liability as against company can be maintained by arraigning only the Directors of the company without arraigning the company as an accused in the complaint is no longer res integra and it is fully covered against the complainant and in favour of the accused by the ratio decidendi of the

Crl.M.C.No.3016 Of 2014

decision of the Apex Court in Aneeta Hada v. Godfather Travels and Tours (P) Ltd. reported in 2012 (2) KLT 736 (SC), wherein the Apex Court, overruling the earlier view taken in overruling the decision in Sheoratan Agarwal and anr. v. State of Madhya Pradesh reported in (1984) 4 SCC 352 and partly overruling the view taken in the case Anil Hada v.Indian Acrylic Ltd. Reported in (2000) 1 SCC 1, the Apex Court has held clearly that an authorized signatory of a company cannot be made liable for prosecution under Sec.138 of the NI Act without the company being arraigned as an accused.

4. In this view of the matter, it is ordered in the interest of justice that the impugned Anx-A complaint and all further proceedings arising therefrom in C.C.No.483/2010 on the file of the Judicial First Class Magistrate Court-I, Adoor are quashed.

With these observations and directions, this Crl.M.C stands finally disposed of.

ALEXANDER THOMAS,
Judge.

bkn/-