

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

Crl.MC.No. 3949 of 2014

ST 568/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-III, KOTTAYAM
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PETITIONER(S)/3RD ACCUSED:

**ASA AJAYKUMAR, AGED 44 YEARS,
W/O DR V.B AJAYKUMAR, VALLOMPARAMBATH PANICKASSERY,
KODUNGALLUR, THRISSUR DISTRICT - 680 664.**

**BY ADVS.SRI.THOMAS T.VARGHESE
SRI.N.SASI
SMT.T.M.BINITHA**

RESPONDENT(S)/COMPLAINAN/ ACCUSED NO 1 & 2:

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**
- 2. JOSEPH CHAVARA,
PROPRIETOR, CHAVARA AN ADVERTISING MEDIA,
BAKER HILL SHOPPING COMPLEX, KOTTAYAM - 686 001.**
- 3. M/S. INDIAN PHARMACY,
KODUNGALLUR P.O., THRISSUR DISTRICT - 680 664,
REPRESENTED BY ITS PROPRIETOR DR. V.B. AJAY KUMAR**
- 4. DR. V.B AJAYAKUMAR,
PROPRIETOR, INDIAN PHARMACY, KODUNGALLUR,
THRISSUR DISTRICT - 680 664.**

**R1 BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN
R2 BY ADVS. SRI.K.ANIL JOSEPH
SRI.DINNY THOMAS
SRI.JAISHANKAR V.NAIR
SMT.ROSHNI MANUEL**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
22-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

Crl.MC.No. 3949 of 2014

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEXURE A1: CERTIFIED COPY OF THE COMPLAINT FILED BY THE
2ND RESPONDENT BEFORE THE JUDICIAL FIRST CLASS
MAGISTRATES COURT NO III, KOTTAYAM.**

ANNEXURE A2: TRUE COPY OF THE SSI CERTIFICATE.

**ANNEXURE A3: TRUE COPY OF THE REGISTRATION UNDER SECTION 16 OF THE
KERALA VALUE ADDED TAX ACT 2003.**

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

ALEXANDER THOMAS, J.

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Crl.M.C No.3949 of 2014

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Dated this the 22nd day of July, 2015

ORDER

The prayer in this Crl.M.C is for an order to quash the impugned Anx.A1 private criminal complaint in ST No. 568/2014 on the file of the Judicial First Class Magistrate Court –III, Kottayam to the extent it is directed against the petitioner herein. It is stated in the impugned complaint that due to certain transactions between the complainant (R2 herein) and the accused (R3, R4 and the petitioner who are A1 to A3 therein), an amount of Rs.15 lakhs was owned by the said accused to the complainant and that the accused had issued a cheque for Rs.15 lakhs, in respect of the above transaction knowing fully well that the amount standing according to that account is not sufficient to honour the said cheque and all the three accused have committed the offence u/s 138 of the Negotiable Instruments Act and Section 420 of the IPC. The contentions raised by the petitioner herein is that the transaction was between the proprietary firm run by the petitioner's husband

(R4) and the complainant (R2 herein) and that the petitioner only happens to be the wife of the 4th respondent and that she had nothing to do with the transactions between the two and that the impugned criminal proceedings are only vexatious in order to harass the petitioner unnecessarily.

2. Heard Sri. Thomas T. Varghese and Sri. N. Sasi, the learned Advocates appearing for the petitioner and Sri. Jayashangar V. Nair the learned counsel appearing for the 2nd respondent/complainant and the Public Prosecutor appearing for the respondent State of Kerala.

3. Though there was some confusion as to whether the third respondent herein is a proprietary concern or a Company, now it is common ground between the petitioner as well as the 2rd respondent complainant that the third respondent herein is only a proprietary concern run by the 4th respondent. It is also common ground between this parties that the cheque in question which is the subject matter of complaint u/s 138 of the Negotiable Instruments Act was issued by the 4th respondent from his account and that the petitioner herein is not a signatory to that cheque. It is also not disputed that the petitioner herein was not holding any

account pertaining to the above said cheque in question. Therefore indisputably, the offence u/s 138 of the NI Act would not lie as against the petitioner herein. The next issue is as to whether the offence u/s 420 of the I.P.C. would lie against the petitioner. The only averments in the impugned Anx-A1 complaint to reverting the allegations of the offence u/s 420 of the I.P.C. is in paragraph No.5 on page 2 of Anx.A1 complaint (page No.7 of this paper book) which reads as follows:

“The accused who gave the cheque, made the complainant to believe that the cheque will be honoured. Accused issued the said cheque to cheat the complainant knowing fully well that the amount standing in his credit in that account is not sufficient to honour the said cheque. The act of the accused amounts to an offence punishable under Sec. 138 of the Negotiable Instruments Act as amended by the Act 66 of 1988.”

4. From a reading of paragraph No.5 of the averments in Anx.A1 complaint, it is clear like the day light that the entire specific allegations raised by the complainant to roping the allegations of cheating to constitute the offence under section 420 of the IPC is solely directed against the 4th respondent herein who is the husband of the petitioner. It is clear that the specific averments therein which impute as follows.

“Accused issued the said cheque to cheat the complainant knowing fully well that the amount standing in his credit in that account is not sufficient to honour the said cheque.”

5. It is common ground that the cheque was issued only by the 4th respondent. Moreover, the said averment clearly says the use of the male gender 'his' while describing the alleged dishonest intention of the accused and therefore the dishonest intention attributed in these averment is directed only against the 4th respondent who is the husband of the petitioner and not against the petitioner. Therefore Anx.A1 complaint does not disclose the offence of cheating as against the petitioner herein.

6. Though the 2nd respondent had filed a reply affidavit producing Anx.R2(a) which is said to be the website details of the concern of the petitioner's husband, it was pointed out by the learned counsel for the petitioner that Anx.R2(a) is not the website in relation to the proprietary concern of Indian Pharmacy belonging to the petitioner's husband but that it is only an internal page of the website and that the first page of the website clearly shows that the website was that of a registered company and Anx.R2(a) happens to be one of the internal pages of that website in which the contact address of the Company is shown as M/s Indian Pharmacy which is the proprietary concern. The learned counsel for the 2nd respondent submitted that the dispute that Anx.R2(a) happens to be only one of

the internal pages of the website and that details in this regard are to be ascertained from the 4th respondent. The controversy in this regard need not detain this Court any longer even otherwise, irrespective as to the correctness of these aspects, this Court has already rendered a conclusive finding that the offence u/s 138 of the Negotiable Instruments Act and Sec.420 of the I.P.C. are not made out as against the petitioner herein. In view of these reason the impugned Anx.A1 complaint which has led to the S.T No. 568/2014 on the file of the Judicial First Class Magistrate Court-III, Kottayam and all further proceedings arising therefrom pending against the petitioner to the extent it is directed against the petitioner will stand quashed. It is made clear that the quashment of these impugned criminal proceedings is only to the benefit of the petitioner herein and the findings and observations in this order shall not in any way trammel or influence the further proceedings in relation to S.T No. 568/2014, which is pending as against the other accused as well as its outcome.

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

sd/-

sab

ALEXANDER THOMAS, JUDGE

