

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

Crl.MC.No. 4598 of 2014 ()

C.C.NO.1277/2012 of JUDICIAL FIRST CLASS MAGISTRATE COURT, IRINJALAKKUDA

PETITIONER(S)/SOLE ACCUSED IN C.C.NO.1277/2012:-:

**Y.HARIKUMAR, AGED 40 YEARS,
S/O.LATE YESODHARAN, MANAGING DIRECTOR,
BEN TOURS & TRAVELS (P) LTD., RESIDING AT DWARAKA, 156,
THEKKUMBHAGAM, TRIPUNITHURA.**

**BY ADVS.SRI.VARGHESE C.KURIAKOSE
SRI.K.H.ASHARAF**

RESPONDENT(S)/STATE & COMPLAINANT IN C.C.NO.1277/2012:-:

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. SIJU JOSE, AGED 42 YEARS,
S/O.JOSE, THOMMANA HOUSE, OORAKAM DESOM,
PULLUR VILLAGE, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT - 680 302.**

**R2 BY ADV. SRI.RAJESH CHAKYAT
R1 BY PUBLIC PROSECUTOR SMT.LILLY LESLIE**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21-07-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A1. CERTIFIED COPY OF THE PRIVATE COMPLAINT INSTITUTED BY THE 2ND RESPONDENT AGAINST THE PETITIONER ALLEGING THE COMMISSION OF OFFENCE CULPABLE UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT.

ANNEXURE A2. PHOTOCOPY OF THE CHEQUE DATED 30.05.2011 BEARING NO.096629 FOR RS.5,41,500/- DRAWN ON THE FEDERAL BANK LTD., KALOOR BRANCH, ERNAKULAM.

ANNEXURE A3. TRUE PHOTOCOPY OF THE LAWYER NOTICE DATED 22.12.2011.

ANNEXURE A4. PHOTOCOPY OF THE ORDER DATED 06.06.2012 TAKING COGNIZANCE OF THE OFFENCE.

RESPONDENT(S)' EXHIBITS

NIL

//True Copy//

P.A. To Judge

Bb

RAJA VIJAYARAGHAVAN V, J.

CrI.M.C.No.4598 of 2014

Dated this the 21st day of July, 2015

O R D E R

In this petition filed under section 482 of the Code of Criminal Procedure, the petitioner who is the sole accused in C.C.NO.1277/2012 on the file of the Judicial First Class Magistrate Court, Irinjalakkuda, seeks to quash the entire proceedings in the said case.

2. Annexure-1 complaint was preferred by the 2nd respondent herein under section 138 read with section 141 of the Negotiable Instruments Act against the petitioner herein. The allegation is that a cheque drawn on an account maintained by M/s. Ben Tourists and Travels Pvt. Ltd., a Company in which the petitioner is the Managing Director, was dishonoured on presentation for insufficiency of funds. After complying with the statutory formalities, complaint was preferred in which the petitioner alone was arrayed as the accused in his personal capacity. Annexure-A2 is the cheque signed by the authorised signatory for and on behalf of the Company.

3. The learned counsel for the petitioner submitted that the Apex Court in **Aneeta Hada v. Godfather Travels and Tours Pvt. Ltd. (2012 (4) SCALE 644)**, has held that for maintaining a prosecution under section 141 of the Act, arraigning the Company as an accused is imperative. It is the contention of the learned counsel that the complaint without the Company in the party array cannot be maintained. The learned counsel has also contended that no averments in terms of section 141 of the Negotiable Instruments Act are made in the complaint.

4. The learned counsel for the 2nd respondent, faced with the legal pronouncement of the Apex Court has also conceded that in Annexure-A1 complaint filed before the learned Magistrate, the Company has not been arrayed as accused.

5. After hearing the learned counsel for the petitioner and the learned counsel appearing for the 2nd respondent and in view of the law laid down by the Apex Court, I am of the considered view that the contention raised by the petitioner is to be upheld. Putting the criminal law into motion is not a matter that can be taken lightly. Before a Magistrate takes cognizance of an offence under section 138 of the Negotiable Instruments

Act, and thereby makes a person responsible for a criminal act, the said court has to ensure strict compliance with the statutory requirements. I am of the considered view that the proceedings against the petitioner is nothing but a pure abuse of the process of law. For the aforesaid reasons, I am of the view that, this is a fit case for quashing the complaint.

In the result, the Criminal Miscellaneous Case is allowed and all further proceedings as against the petitioner in C.C.No.1277/2012 on the file of Judicial First Class Magistrate Court, Irinjalakkuda are quashed.

Sd/-

**RAJA VIJAYARAGHAVAN V,
JUDGE.**

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[True copy]

P.A to Judge