

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

Cr1.MC.No.6190 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN ST 886/2014 of C.J.M., KOLLAM DATED
CRIME NO. 963/2014 OF ERAVIPURAM POLICE STATION, KOLLAM.

PETITIONER(S)/PETITIONER/ACCUSED:

SURESH KUMAR,
PRESIDENT, KACHIKADAVU SREE KRISHNA SWAMY TEMPLE,
THEKKEVILA, KOLLAM-691 006.

BY ADVS.DR.K.P.SATHEESAN (SR.)
SRI.P.MOHANDAS (ERNAKULAM)
SRI.ANOOP.V.NAIR
SRI.S.VIBHEESHANAN
SRI.K.SUDHINKUMAR

RESPONDENT(S)/RESPONDENTS/STATE & DEFACTO COMPLAINANT:

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

2. C.SOMAN,
CHANDRAKANTHAM HOUSE, NANDHANAM NAGAR NO.110,
THEKKEVILA.P.O, KOLLAM-691 006.

R2 BY ADVS.SRI.BECHU KURIAN THOMAS (SR.)
SRI.S.SREEDEV

R1 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
25-11-2015 ALONG WITH CRL.M.C.NO.6191/2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

:2:

Cr1.MC.No. 6190 of 2015 ()

APPENDIX

PETITIONER(S) ' EXHIBITS
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ANNEXURE-I CERTIFIED COPY OF THE COMPLAINT FILED BY THE 2ND RESPONDENT
PENDING BEFORE THE CHIEF JUDICIAL MAGISTRATE'S COURT KOLLAM
AS S.T.886/2014.

ANNEXURE-II TRUE COPY OF THE F.I.R.IN CRIME NO.963/2014 OF ERAVIPURAM
POLICE STATION DATED 25-06-2014.

RESPONDENT(S) ' EXHIBITS
-----: NIL

//True Copy//

P.A. to Judge

SS

K. RAMAKRISHNAN, J.

Crl. M.C. Nos.6190 of 2015 & 6191 of 2015

Dated this the 25th day of November, 2015

ORDER

Both these cases were filed by the same accused in S.T.Nos.886/2014 and 546/2015, both pending before the Chief Judicial Magistrate Court, Kollam, to quash the proceedings under Section 482 of the Code of Criminal Procedure.

2. The common case in both these cases was that the petitioner was a president of a temple committee and for the construction purposes, loan was taken from 2nd respondent and as security for the said loan amount, two cheques, one issued along with the secretary of the committee and one personal cheque obtained by the 2nd respondent. Though the temple committee had repaid the loan amount taken from the 2nd respondent, misusing the cheques two complaints have been filed by the 2nd

respondent against the petitioner alleging commission of the offence under Section 138 of the Negotiable Instruments Act and those cases have been taken on file. According to the petitioner in both the petitions that offence under Section 138 of the Negotiable Instruments Act has not been attracted and proceeding with the cases will only amount to abuse of process of court. There is no possibility of conviction. So he filed the above petitions seeking the following reliefs:

“It is humbly prayed that this Hon'ble Court may be pleased to quash Annexure-I complaint in S.T.No.886/2014 in Crl.M.C.No.6190/2015 and Annexure-III complaint in S.T.No.546/2015 in Crl.M.C.No. 6191/2015 pending before the Chief Judicial Magistrate's Court, Kollam and render justice to the petitioners”.

3. Heard the senior counsel Dr.K.P.Satheesan, counsel appearing for the petitioner in both these cases and senior counsel Sri. Bechu Kurian Thomas appearing for the 2nd respondent and Smt.Seena Ramakrishnan, Public Prosecutor appearing for the 1st respondent in both the

cases.

4. The counsel for the petitioner submitted that the temple committee had obtained loan from the complainant in this case and one cheque belonging to the temple committee signed by the president and secretary and one personal cheque of the petitioner were given as security for the transaction. The petitioner happens to be the president of the temple committee, he also joined in signing one of the cheques along with the secretary and issued the cheques. Since the amounts have already been paid, there is no existing liability. So the complainant should not have presented the cheques and the offence is not attracted.

5. On the other hand, learned counsel for the 2nd respondent submitted that it is a matter for evidence.

6. Heard the Public Prosecutor also.

7. Allegation in both the cases was that the

accused persons in the respective complaints have borrowed amounts and issued the cheques and when the cheques presented were dishonoured for the reason 'funds insufficient' and in spite of notice issued the amount was not paid and thereby the respective accused including the petitioner mentioned in the complaints committed the offence punishable under Section 138 of the Negotiable Instruments Act.

8. The case of the petitioners appears to be that the cheques were not issued in discharge of any liability, but as a security for the loan taken for some activities connected with the temple of which they are president and secretary and the petitioner happened to be president of the committee issued one cheque along with the secretary of the temple committee and other personal cheque as insisted by the complainant and the amounts have already been paid. At the time when the court has to take cognizance of

the complaint under Section 138 of the Act, court need only to consider the allegations in the complaint as to whether the ingredients of the offence under Section 138 of the Act have been made or not. Even according to the counsel for the petitioner, though the allegations may attract the offence, really it was only intended to be given only as a security and not in discharge of any liability. Whether the cheque was issued as a security or not is a matter for evidence. When a case has to be decided on the basis of evidence, then it is not proper for this court to quash the proceedings invoking the power under Section 482 of the Code. So it is not a fit case where the power under Section 482 of the Code has to be invoked to quash the proceedings and the petition is liable to be dismissed.

In the result, the petitions are dismissed with liberty for the petitioners to raise all the contentions raised by them in this petition before the concerned court where

the complaints are pending, as this court has not expressed any opinion regarding the defence taken by the petitioner while disposing this petition. Chief Judicial Magistrate is directed to expedite the trial of the case.

Office is directed to communicate this order to the concerned court, immediately.

Sd/-
K. Ramakrishnan, Judge

//True Copy//

P.A. to Judge

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