

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

CRL.MC.NO. 6514 OF 2015 ()

CC 2460/2012 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KOCHI

PETITIONER(S)/ACCUSED:

**JINCY JUDGE, W/O.JUDE AGED 38 YEARS
W/O.JUDE, CHENATTU HOUSE, POLLASSERRY ROAD
RAJEEV JUNCTION, PALLURUTHY P.O., COCHIN - 682 006.**

BY ADV. SRI.R.DIVAKARAN

RESPONDENT(S)/COMPLAINANT/STATE:

- 1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, COCHIN 682 031.**
- 2. MANOJ TRADERS AND KURIES (INDIA) PRIVATE LIMITED
A COMPANY REGISTERED UNDER THE COMPANIES ACT 1956 AND
HAVING REGISTERED HEAD OFFICE AT MANOJ HOUSE
MATTAMMAL THEVARA, COCHIN 682 013
REPRESENTED BY ITS MANAGING DIRECTOR SOMASEKHARAN NAIR
S/O.GOPALAN NAIR, RESIDING AT PAURNAMI, KONTHURUTHY
ELAMKULAM VILLAGE, KANAYANNUR TALUK.**

R2 BY ADV. SRI.S.RAJEEV

R1 BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 07-12-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

CRL.MC.NO. 6514 OF 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNEXURE A1: THE CERTIFIED COPY OF THE COMPLAINT IN CC NO.2460/2012 ON
THE FILE OF JUDICIAL 1ST CLASS MAGISTRATE COURT,II, KOCHI.**

RESPONDENT(S)' EXHIBITS

/TRUE COPY/

P.A. TO JUDGE

SKV

K.RAMAKRISHNAN, J.

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Crl. M.C. No. 6514 OF 2015

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Dated this the 7th day of December, 2015

ORDER

This is an application filed by the accused in CC No.2460/2012 on the file of the Judicial First Class Magistrate's Court Kochi to quash the proceedings under 482 of the Code of Criminal Procedure.

2. It is alleged in the petition that husband of the petitioner as a subscriber to the chitty conducted by the complainant concern and she was a surety for her husband when the amounts were released to him while he bid the chitty. The petitioner and her husband were having joint account in Federal Bank, Palluruthy Branch. She had not issued any cheque and her husband might have taken a cheque and presented the same to the complainant when he bid the amount. No case has been registered against the principal debtor and as such she cannot be proceed against under Section 138 of the Negotiable Instruments Act. So she prayed for quashing the proceedings as against her.

3. Heard the counsel for the petitioner Shri. R.Divakaran and counsel for the 2nd respondent Shri. S. Rajeev and Smt.Seena Ramakrishnan, learned Public Prosecutor appearing for the State.

4. The case of the complainant in the complaint was that the husband of the accused was a subscriber of the chitty conducted by them and he had bid the chitty and the amounts were due. The accused who was a surety has undertaken to pay the amount and issued disputed cheque which when presented was dishonoured and inspite of the notice issued she did not pay the amount. Thereby she had committed offence. According to the petitioner, she had not issued any cheque. The cheque might have been taken by her husband and handed over to the complainant when he bid the chitty without her knowledge. These are all matters for evidence. Without the evidence, it is not proper for this court to consider the contentions raised by the petitioner in this petition and probably this may be a defence available to her in the proceedings pending before the court below. When the matter has to be decided on the

basis of evidence, it is settled law that this court cannot invoke the power under Section 482 of the Code of Criminal Procedure to quash the proceedings. On going through the allegations in the complaint, it cannot be said that no offence under Section 138 of the Negotiable Act has been prima facie made out and at that stage court need only to consider as to whether the ingredients of the offence have been alleged in the complaint so as to proceed with the case against the accused.

5. Under the circumstances, it is not a fit case to invoke the power under Section 482 of the Code of Criminal Procedure to quash the proceedings. Petitioner is at liberty to raise all the contentions raised by her in this petition before the court below and adduce evidence on that aspect and court below is at liberty to appreciate the evidence and pass appropriate orders in this regard in accordance with law. So the petitioner is not entitled to get the relief claimed in the petition and the petition is dismissed. Interim order already granted is vacated. The petitioner is directed to appear before the court below on 7.1.2016. If

the petitioner applies for personal exemption after her appearance, that can be considered by the court below and pass appropriate orders in accordance with law.

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

Sd/-
K.RAMAKRISHNAN, JUDGE

SKV