

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

Crl.MC.No. 5891 of 2014 ()

ST.NO. 1215/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, TIRUR

PETITIONER/3RD ACCUSED :

DR.SHARAFU P HAMEED,MANAGING DIRECTOR,
VENGAD RESORTS AND RETREATS LIMITED, KEEZHMURI.P.O.,
P.O VENGAD- 679 338, VALANCHERY, MALAPPURAM.

BY ADVS.SRI.N.M.MADHU
SRI.P.P.HARRIS
SMT.C.S.RAJANI

RESPONDENT(S)/COMPLAINANT/ACCUSED 1 & 2 AND STATE :

1. K.T SAID MOHAMED,AGED 60 YEARS,
S/O.MOIDEEN K.T, KAMPALA THEKKUMURI HOUSE, SOUTH BAZAR,
KUTTIPPURAM AMSOM DESOM, P.O KUTTIPPURAM-679 571,
TIRUR TALUK, REPRESENTED BY POWER OF ATTORNEY HOLDER
ABDUL KHADER,AGED 43 YEARS,S/O.MOIDEEN K.T,
KAMPALA THEKKUMURI HOUSE, SOUTH BAZAR,
KUTTIPPURAM AMSOM DESOM, P.O KUTTIPPURAM- 679 571,
TIRUR TALUK.
2. K.BAPPUTTY,AGED 47 YEARS,
S/O.SAIDALAVI, KONNIKKAL HOUSE, ANAKKARA,
P.O KUMBIDI- 679 553, PALAKKAD DISTRICT.
3. SAID MOHAMED K.T.,
(DOCUMENT WRITER),AGED 62 YEARS, S/O.BEERANKUTTY HAJI,
KUMBALA THEKKUMURI HOUSE, NEAR GOVERNMENT HIGH SCHOOL,
P.O KUTTIPPURAM- 679 571, TIRUR TALUK.
4. STATE OF KERALA,
REP BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM -682 031.

R1 BY ADV. SRI.P.K.SAJEEV
R2 BY ADVS. SRI.K.R.AVINASH (KUNNATH)
SRI.ABDUL RAOOF PALLIPATH
R3 BY ADVS. SRI.K.B.ARUNKUMAR
SMT.AMBIKA NAIR
SRI.HARIDAS
R4 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 27-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEX A. COPY OF THE COMPLAINT IN ST.NO.1215/2014 ON THE FILES OF THE CHIEF JUDICIAL FIRST CLASS MAGISTRATE, TIRUR.
- ANNEX B. COPY OF THE STATUTORY NOTICE DATED 11.04.14 ISSUED BY THE 1ST RESPONDENT.
- ANNEX C. COPY OF THE REPLY NOTICE DATED 06/05/2014
- ANNEX D. COPY OF THE REPLY NOTICE DATED 08.11.13 ISSUED BY THE WHOLE TIME DIRECTOR TO THE FIRST RESPONDENT.
- ANNEX E. COPY OF THE REPLY NOTICE ISSUED BY THE WHOLE TIME DIRECTOR TO THE FIRST RESPONDENT.

RESPONDENT(S)' ANNEXURES: NIL

/TRUE COPY/

P.A.TO JUDGE

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ALEXANDER THOMAS, J.

Crl.M.C.No.5891 Of 2014

Dated this the 27th day of May, 2015.

ORDER

The prayer in this Crl.M.C is as follows:

“..... to call for the records in S.T.No.1215/2014 on the files of Judicial First Class Magistrate Court, Tirur and to quash the same as against the petitioner by allowing this Criminal Miscellaneous Case”.

2. The petitioner is one of the accused in Annexure-A private criminal complaint alleging offence under Sec.138 of the Negotiable Instruments Act. It is averred that the petitioner herein was not actually responsible for the conduct of the business of the company in question in any manner at the time of issuance of cheque and that he had only later taken charge as the Managing Director of the company. It is stated that he has no involvement or role in the day-to-day affairs of the company at least at the time of tendering of the cheque. Neither statutory notice nor the complaint would show any allegations against him. No statutory notice as contemplated under the provisions of Sec.138 of the Act has been served on the petitioner that the petitioner

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is permanently employed in Qatar and he does not have any role in the daily affairs of the company, though he took the post of the Managing Director after the removal of the 2nd respondent. It is in the light of these aspects, it is prayed that the impugned private criminal complaint to the extent it affects the petitioner herein may be quashed.

3. Sri.P.K.Sajeev, learned counsel appearing for the 1st respondent (complainant) has sworn to affidavit dated 3.4.2015 in this case. Paragraph 4 of the same reads as follows:

“It has been noted that he was not even a director of the company when this cheque was issued. Hence I am not particular about continuing the proceedings against the petitioner as representative of the above company but that should not deprive my rights to proceed against (1) Mr.Bapputty, aged 47 years, S/o.Saidalavi, Konickal House, Anakkara P.O, Kumbidi - 679 533, Palakkad Dist, and (2) Mr.Saidu Muhammed K.T., aged 62 years, S/o. Beeran Kutty Haji, Kambala Thekkumury House, Near Government High School, P.O., Kuttippuram, Pin - 679 571, Tirur Taluk and (3) Vengad Resorts and Retreats Ltd, Keezhmuri P.O., Vengad - 679 338, Valanchery Malappuram District”.

In view of the above said pleadings of the petitioner and 1st respondent, it is ordered in the interest of justice that the impugned criminal proceedings to the extent it affects the petitioner stands quashed. However, this order will not in any way touch upon the correctness or otherwise of the prosecution in this case now pending against the other

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accused. It is made clear that the company as a separate entity will remain in the accused array of the complaint, but the individual name of the petitioner mentioned therein shall stand struck off and deleted.

The Cr1.M.C. stands disposed of as above.

ALEXANDER THOMAS,
Judge.

bkn/-