

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

Cr1.MC.No.6086 of 2014 ()

AGAINST THE ORDER/JUDGMENT IN CC 2575/2013 of J.M.F.C.-II,
THRISSUR

PETITIONER(S)/PETITIONER/ACCUSED:

RISHAJ, AGED 38 YEARS,
S/O BALACHANDRAN, SATHYAMAYA, PUTHOORKKARA,
AYYANTHOLE, THRISSUR.

BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SRI.M.REVIKRISHNAN
SRI.VIPIN NARAYAN

RESPONDENT(S)/RESPONDENTS/COMPLAINANT AND STATE:

1. JIJU, AGED 41 YEARS,
S/O FRANCIS, THATTIL CHEENIKKAL HOUSE, NEDUPUZHA P.O.,
KANIMANGALAM, THRISSUR-680 585

2. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.

R1 BY ADV. SRI.V.BINOY RAM
R2 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
24-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

:2:

Cr1.MC.No. 6086 of 2014 ()

APPENDIX

PETITIONER(S) ' EXHIBITS :

ANNEXURE A: TRUE COPY OF THE PRIVATE COMPLAINT PREFERRED BY THE 1ST RESPONDENT BEFORE THE COURT BELOW AGAINST THE ACCUSED/PETITIONER.

ANNEXURE B: TRUE COPY OF THE AGREEMENT OF CONSENSUS ENTERED BETWEEN SATHEESH AND HIS MOTHER ON ONE SIDE AND THE PETITIONER ON THE OTHER.

ANNEXURE C: COPY OF THE AFFIDAVIT SUBMITTED BY THE 1ST RESPONDENT ALONG WITH HIS NOMINATION AS CANDIDATE FOR THE LAST PARLIAMENT ELECTIONS.

ANNEXURE D: TRUE COPY OF THE CERTIFICATE OF ENCUMBRANCE PERTAINING TO THE PROPERTY OF THE 1ST RESPONDENT.

ANNEXURE E: TRUE COPY OF THE PRIVATE COMPLAINT PREFERRED BY THE PETITIONER BEFORE THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, THRISSUR AGAINST THE 1ST RESPONDENT HEREIN AND ONE ANOTHER.

ANNEXURE F: TRUE COPY OF THE FIR IN CRIME NO.1565/2014 REGISTERED BY THRISSUR WEST POLICE STATION, THRISSUR DISTRICT.

RESPONDENT(S) ' EXHIBITS: NIL

// True Copy//

P.A. to Judge

SS

K. RAMAKRISHNAN, J.

Crl.M.C.No.6086 of 2014

Dated this the 24th day of November, 2015

ORDER

This is an application filed by the petitioner who is the accused in C.C.No.2575/2013 pending before the Judicial First Class Magistrate Court-II, Thrissur, to quash the proceedings under Section 482 of the Code of Criminal Procedure.

2. It is alleged in the petition that the petitioner has been arrayed as sole accused in C.C.No.2575/2013 on the file of the Judicial First Class Magistrate Court-II, Thrissur, which was taken on file on the basis of a private complaint filed by the first respondent against the accused under Section 138 of the Negotiable Instruments Act (hereinafter called 'the Act').

3. The allegation in the complaint was that,

accused borrowed a sum of ₹26,00,000/- for domestic purpose and towards that liability, he had issued the disputed cheque. The cheque when presented was dishonoured for the reasons 'funds insufficient' and when a notice has been issued intimating the dishonour and demanding payment of the amount, it was returned with endorsement 'refused' by the addressee. So according to the complainant, the accused had committed the offence punishable under Section 138 of the Negotiable Instruments Act. So he filed Annexure-(A) complaint.

4. The case of the petitioner in the petition was that, he was employed in Gulf for the last more than 15 years and he came back to his native place in 2009 and started a business with one Sathish Venugopal, his friend by investing huge amount and the said Sathish had removed his cheque and with the aid of the complainant, the present complaint has been filed. When he came to know about the filing of the complaint, misusing his cheque, he filed

Annexure-(E) complaint before the Chief Judicial Magistrate Court, Thrissur, against the complainant and the said Sathish Venugopal, alleging offences under Section 379, 420, 465, 468, 471 read with Section 34 of the Indian Penal Code and the same was forwarded to the police for investigation under Section 156(3) of the Code of Criminal Procedure. On receipt of the same, Thrissur west police had registered Annexure-(F) first information report, as crime No.1565/2014 against the above said persons alleging commission of the above said offences. Investigation is in progress. The complainant had no source to pay so much amount and his case is not believable and he relies on Annexure-(C) and (D) affidavit and deceleration said to have been filed by him when he contested an election and the encumbrance certificate to shows his assets to prove these aspects. He had also produced Annexure(B) agreement said to have been entered into between himself and Sathish Venugopal. According to the petitioner, no offence under

Section 138 is made out. So proceeding with the case will amount to mere abuse of process of court and conviction in such cases is not possible. So he prayed for quashing the proceedings.

5. Heard Adv. Sri.P.Vijaya Bhanu, Senior counsel appearing for the petitioner and Sri.Binoy Ram, counsel appearing for the first respondent and Smt.Seena Ramakrishnan, Public Prosecution appearing for the 2nd respondent.

6. The counsel for the petitioner submitted that the documentary evidence produced by the petitioner will go to show that there is no possibility of the petitioner borrowing any amount and issuing any cheque and he had no financial capacity to raise the amount as well. Further the fact that he filed a criminal complaint and investigation is in progress also will go to show that his case is more probable and proceeding with the case will only amount to abuse of process of court. He is not an income tax payee. So

he prayed for allowing the application.

7. The counsel for the first respondent submitted that all these things are matter for evidence and on the basis of allegations it cannot be said that no offence under Section 138 is attracted.

8. Heard the Public Prosecutor also.

9. It is an admitted fact that on the basis of Annexure-(A) complaint filed by the complainant who is the first respondent herein, the case was taken on file as C.C.No.2575/2013 on the file of the Judicial First Class Magistrate Court-II, Thrissur, against the petitioner, alleging offence under Section 138 of the Negotiable Instruments Act. On going through he allegations made in Annexure-(A), it cannot be said that the ingredients of the offence under Section 138 of the Act has not been made out. At the stage when court below is expected to take cognizance, court need only to consider as to whether the allegations in the complaint along with the documents

produced is sufficient to made out a case under Section 138 of the Act to issue process to the accused.

10. Further the fact alleged in the petition that there was some business transaction between the petitioner and Sathish Venugopal and his blank signed cheque kept in the business premises was taken away by Sathish Venugopal and misusing the cheque and using the complainant at the instigation of Sathish Venugopal, the present complaint was filed etc., are matter for evidence. These are all the defences available to the accused to get himself exonerated from the allegations made in the complaint alleging offence under Section 138 of the Negotiable Instruments Act. Further the notice sent by the complainant intimating the dishonour and demanding payment was returned by the addressee with endorsement 'refused' as seen from Annexure(A) complaint. Whether it was properly issued, whether the accused is expected to receive the notice, if notice is sent in that address etc., are

matter for evidence. At this stage, this court cannot go into those aspects especially when the presumption under Section 27 of the General Clause Act is available in favour of the complainant.

11. The question regarding the particulars mentioned in Annexures-(c) and (d) are also matter to be considered on the basis of evidence, as to find out whether those documents are sufficient to disbelieve the case of the complainant and that has to be considered by the trial court on the basis of the explanation to be given by the complainant when those documents are confronted to him, which cannot be gone into by this court while invoking the power under Section 482 of the Code of Criminal Procedure. If the matters are to be considered by the court on the basis of elaborate evidence as part of the defence, then it is not a fit case for this court to invoke the power under Section 482 of the Code of Criminal Procedure to quash the proceedings. The petitioner is at liberty to adduce

evidence on these aspects before the trial court and the trial court is bound to consider those documents and evidence and come to an appropriate conclusion regarding the transaction and the defence taken by the complainant and the accused respectively and pass appropriate orders in the case. So considering the circumstances, this court feels that it is not a fit case to invoke the power under Section 482 of the Code of Criminal Procedure to quash the proceedings, especially when the allegations in the complaint are sufficient to attract the offence under Section 138 of the Act, and all other matters are to be proved by the accused by adducing proper evidence before the court below. So the petitioner is not entitled to get the relief claimed in the petition and the petition is liable to be dismissed.

In the result, the petition is dismissed. Considering the fact that the case is of the year 2013 and also as per the directions of the Supreme Court, the cases

filed under Section 138 of the Act have to be disposed of at the earliest possible time, taking into consideration the legislative intention of incorporating the provision in the Negotiable Instruments Act, court below is directed to expedite disposal of the case, taking into consideration the guidelines given by the apex court in the disposal of such matters.

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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