

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

Crl.Rev.Pet.No. 1129 of 2012 ()

AGAINST THE ORDER IN CC 388/2008 of J.M.F.C.-II, KOCHI DATED 27-12-2011

REVISION PETITIONER(S)/COMPLAINANT

CENTRAL BANK OF INDIA, KOCHI BRANCH
STAR JUNCTION, MATTANCHERY, KOCHI-2
REPRESENTED BY ITS BRANCH MANAGER.

BY ADVS.SRI.DEVAN RAMACHANDRAN
SRI.ANEESH K.M.
SRI.K.SANTHOSH KUMAR (KALIYANAM)
SRI.S.NIKHIL SANKAR
SRI.ADARSH KUMAR

RESPONDENT(S):

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1. THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, PIN 682 031.
 2. MRS.GETRUDE D'CRUZ
H.NO.X/1135, VELI, KOCHI-06.

R1 BY PUBLIC PROSECUTOR SMT.LALIZA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
04-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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CRL.R.P. No.1129 OF 2012

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Dated this the 4th day of September, 2015

ORDER

This revision petition is directed against order dated 27.12.2011 in C.C.No.388 of 2008 passed by the Court of Judicial First Class Magistrate-II, Kochi. The said order reads thus:-

“Complainant absent. No representation. No steps taken. This case is dismissed U/s.204(4) Cr.P.C.”

2. I have heard the learned counsel for the revision petitioner and the learned Public Prosecutor. Though notice was served on the second respondent through special messenger, she has not chosen to enter appearance. The revision petitioner herein was the complainant and the second respondent was the accused therein. The complaint was filed by the revision petitioner against the second respondent alleging commission of offence under section 138 of the Negotiable

Instruments Act. It is alleged therein that the accused was the guarantor to a Consumer Loan Scheme granted to Shaju Samuel, Mrs. Usha Fernandez, Mrs. Staffy Thomas and Mrs. Sukumari and the said loanees committed default in repayment of the loan amount and in such circumstances, on being put to notice, the second respondent who stood as their guarantor, issued cheque bearing No.248449 dated 12.12.2007 in favour of the complainant to discharge the said legally enforceable liability for an amount of ₹2,33,940/-. It is further contended that the said cheque was dishonoured on presentation for collection on the ground 'account closed'. In the complaint, it was alleged that the second respondent deliberately issued the cheque in question knowing fully that the account was already closed. Evidently, the said complaint was taken on file and was numbered as C.C.No.388 of 2008. Summons was issued to the second respondent on 7.6.2008. Subsequently, a non-bailable warrant was also issued against the second respondent on 1.12.2008. The accused thereafter entered appearance through counsel and filed a petition under section

205 of the Code of Criminal Procedure seeking exemption from personal appearance and according to the revision petitioner, that application was allowed by the trial court as per proceedings dated 30.6.2009. Thereafter, the case was posted for evidence. The revision petitioner/complainant has also filed proof affidavit in lieu of chief examination on 1.3.2011 and according to the revision petitioner, he was ready to adduce evidence in the matter and the case was then posted for evidence on 15.3.2011. It is the further contention that on 15.3.2011, the learned counsel for the accused submitted that he got no instructions from the accused and in the light of the said submission, the learned Magistrate issued non-bailable warrant against the accused. Though proper steps to execute the warrant were taken, it could not be executed. In paragraph 6 of the revision petition, it is further stated that non-bailable warrants were issued by the court on 24.6.2011 and on 28.8.2011. The contention is that it was thereafter that the case was posted to 27.12.2011 and on that day, the learned counsel for the complainant could not be present in the court.

Ultimately, as per the impugned order, the complaint was dismissed under section 204(4) Cr.P.C.

3. The precise case of the revision petitioner is that owing to the repeated non-appearance of the accused/second respondent, earlier, non-bailable warrants were issued against her. The second respondent who entered appearance and filed petition under section 205 Cr.P.C, later refrained herself from appearing before the court only with an intention to protract the proceedings and to defeat the due and just rights of the revision petitioner. The fact that the accused/second respondent had earlier appeared in the proceedings and filed a petition under section 205, Cr.P.C for dispensing with the personal appearance is not in dispute. It is also not in dispute that non-bailable warrants were issued, in the said circumstances, against the second respondent. When that be the case, the trial court should not have dismissed the complaint under section 204(4) Cr.P.C and the court below should have initiated appropriate steps to ensure the

appearance of the accused by taking coercive steps, in accordance with law. At any rate, there was no justification for dismissing the calender case in such circumstances under section 204(4) Cr.P.C. In view of the facts not in dispute as mentioned above, the second respondent who was exempted from appearance under section 205 Cr.P.C could have been directed to appear personally and failure on the part of the second respondent to enter appearance after getting exemption from personal attendance under section 205 Cr.P.C should have been a ground for the court below to initiate appropriate action treating it as a case where the accused has been either absconding or concealing herself. At any rate, upon such circumstances, after following the procedures contemplated under law, proceedings under section 82 Cr.P.C could have been initiated. When it is evident that the accused was absconding or concealing herself after obtaining an order for exemption from personal appearance, the order dismissing the complaint under section 204(4) Cr.P.C can only be described as illegal and it is liable to be interfered with. In the result, this revision

petition is allowed. Order dated 27.12.2011 in C.C.No.388 of 2008 of the Court of Judicial First Class Magistrate-II, Kochi is set aside. C.C.No.388 of 2008 is restored into file of the trial court. With appropriate notice to the revision petitioner and the second respondent the trial court shall proceed with C.C.No.388 of 2008 in accordance with law.

Sd/-

**C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

