

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

Crl.Rev.Pet.No. 718 of 2015 ()

**AGAINST THE ORDER DATED 19-3-2015 IN C.C.NO.946/2008 IN THE FILE OF JUDICIAL
FIRST CLASS MAGISTRATE COURT-V (SPECIAL COURT FOR MARK LIST CASES)
THIRUVANANTHAPURAM**

REVISION PETITIONER(S)/3RD ACCUSED:

**ASHARAF,
MANAGING PARTNER, M/S.ASSOCIATED ENTERPRISES,
NEELAKANTA FLATS, TC 25/3010, MRRA-30-A,
MALLOOR ROAD, VANICHIYOOR, THIRUVANANTHAPURAM.**

BY ADV. SRI.DENIZEN KOMATH

RESPONDENT(S)/COMPLAINANT & STATE:

**1. K.SANTHOSH KUMAR,
S/O.KRISHNA PILLAI, TC.30/297, KALLUMOODU,
ANAYARA PO, THIRUVANANTHAPURAM-695 001**

**2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM**

**R1 BY ADV. SRI.SABU S.KALLARAMOOLA
R BY PUBLIC PROSECUTOR SRI.JIBU P.THOMAS**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
21-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

AD

Crl.Rev.Pet.No. 718 of 2015 ()

APPENDIX

PETITIONER'S EXHIBITS

**ANNEXURE A-1: TRUE PHOTOCOPY OF THE COMPLAINT PREFERRED BY THE 1ST
RESPONDENT BEFORE THE TRIAL COURT AS C.C. NO.946/2008**

RESPONDENT'S EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

AD

K.HARILAL, J.

Crl.R.P No. 718 of 2015

Dated this the 21st day of July, 2015

ORDER

The petitioner is the 3rd accused in CC No.946/08 on the files of the Judicial First Class Magistrate's Court-V (Special Court for Mark List Cases), Thiruvananthapuram. The above private complainant was filed by the 1st respondent herein against the petitioner alleging that the accused had borrowed an amount of Rs.1,50,000/- for their partnership business and in discharge of the said liability, he issued Ext.P1 cheque for the said amount drawn on Nedungadi Bank, Tampanoor Branch, and on the presentation of the said cheque, the same was returned with an endorsement 'no such account'. Consequently, though the complainant had caused to issue a lawyer's notice calling upon him to pay the cheque amount; but he did not pay the cheque amount. Hence, the complainant has preferred the above

private complaint alleging the commission of the offence punishable under Section 420 read with Section 34 of the IPC. The complainant was examined as PW1, the Bank Manager of the Punjab National Bank, was examined as PW2 and Exts.P1 to P6 were also got marked. After considering the said evidence, the court below rejected the contention of the accused that the evidence adduced under Section 245 of the Cr.P.C does not disclose a *prima facie* case against the accused and found that there are sufficient grounds to proceed against the accused. The legality and propriety of the above findings are under challenge in this revision petition.

2. I heard the learned counsel for the petitioner. The learned counsel for the petitioner advanced arguments assailing the findings whereby the court below rejected the claim for discharge.

3. The short question that arises for consideration in this revision petition is, whether the complainant has made out a *prima facie* case against the

accused, which if un rebutted would warrant conviction. The case of the complainant is that with a dishonest intention to deceive the complainant, the accused had drawn and issued Ext.P1 cheque in the year 2006, on the account in a Bank which was ceased to exist in the year 2003. The non-existence of the Nedungadi Bank on which the Ext.P1 cheque was drawn and issued is not a disputed fact. The point is whether the accused had issued the cheque with a dishonest intention to cheat the complainant.

4. I am of the opinion that this question can be considered during the course of trial only. *Prima facie*, the complainant has a case that the accused had drawn and issued a cheque of the Nedungadi Bank which is not in existence from 2003 onwards. This is sufficient to make out a *prima facie* case against the accused. Whether the petitioner had any dishonest intention to cheat the complainant is a question that deserves to be considered after trial only. Therefore, there is no illegality or

impropriety in the findings whereby the court below rejected the contentions raised by the accused at this stage. The court below shall proceed in accordance with law, and pass final judgment untrammelled by the above observations. Needless to say, the petitioner can raise all these contentions during the course of trial and final hearing.

This Crl.R.P is dismissed accordingly.

Sd/-
K.HARILAL,
JUDGE

AD