IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

OP(Crl.).No. 64 of 2015 (Q)

IN C.C NO.795/2014 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT -II, ALUVA

PETITIONER/ACCUSED:

DEEPESH, AGED 30 YEARS,
S/O. PRATHAPAN, PANDIPILLI HOUSE,
PADAM ROAD,
ELAMAKKARA P.O.,
ERNAKULAM DISTRICT.

BY ADVS.SRI.R.ANILKUMAR
SRI.P.M.RAJAGOPAL

RESPONDENTS/RESPONDENTS:

1. STATE OF KERALA
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA.

2. SUB INSPECTOR OF POLICE,
   ELAMAKKARA POLICE STATION, ELAMAKKARA P.O,
   ERNAKULAM DISTRICT, PIN:682 026.

R1&2 BY GOVERNMENT PLEADER SMT.S.HYMA

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(Crl.).No. 64 of 2015 (Q)

APPENDIX

PETITIONERS' EXHIBITS

EXHIBIT P1: PHOTOCOPY OF THE FIR IN CRIME NO.266/14 DATED 14.5.2014.

EXHIBIT P2: PHOTOCOPY OF THE FINAL REPORT IN CC NO.795/2014 IN THE JFCM-II, ALUVA.

RESPONDENTS' EXHIBITS

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

O.P(Crl) No. 64 of 2015

Dated this the 6th day of April, 2015

J U D G M E N T

The petitioner herein is the sole accused in C.C No.795/2014 of the Judicial First Class Magistrate Court II, Aluva. The final report in the said case was submitted by the police under Section 17 of the Kerala Money Lenders Act and under Section 3 and 4 of the Prevention of Exorbitant Interest Act. The petitioner herein seeks orders quashing the prosecution on the ground that the FIR or the final report in this case does not contain anything essential for such a prosecution. The final report shows that the petitioner has licence to conduct chitty business. The prosecution case is that under the guise of chitty business he conducted unauthorised money lending business. On a perusal of the Ext.P2 final report I find that the police has cited some witnesses but most of these witnesses are to prove the chitty transaction. The FIR shows that the crime was registered by the police against the petitioner on the basis of seizure of some bounced cheque leaves. The final report shows that the police does not have any definite material for prosecution. If at all the petitioner had bounced cheque leaves in his possession, or some diary containing some details of the chitty business, there cannot be a prosecution against him under the Kerala Money Lenders Act. Lending money once or twice will not constitute unauthorised money lending business made punishable under the Kerala Money Lenders Act. Here the police does have any material for a successful prosecution under the Kerala Money Lenders Act. The petitioner is admittedly licensed to conduct chitty business. This is revealed by the final report. When such a person is accused of having conducted money lending business unauthorisedly, the police must have definite materials other than the materials and registers showing the petitioner's chitty business. It is not known how such a prosecution can successfully proceed simply on the basis of one or two bounced cheque leaves. The only witness cited by the prosecution is CW5 to say that he had borrowed ₹5,000/- once from the petitioner. If at all it is true, it is not known how lending ₹5,000/- once in a personal transaction will constitute the offence punishable under the Kerala Money Lenders Act. I find that the present prosecution is sheer abuse of legal process. The petitioner's grievance that cognizance was wrongly taken by the court below is found genuine. Such a prosecution is liable to be quashed.

In the result, this Original Petition is allowed. The prosecution against the petitioner in C.C No.795/2014 of the Judicial First Class Magistrate Court II, Aluva will stand quashed under Article 227 of the Constitution of India.

Sd/-
P.UBAID
JUDGE

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