IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR

TUESDAY, THE 01ST DAY OF DECEMBER 2020 / 10TH AGRAHAYANA, 1942

Crl.MC.No.3652 OF 2020(F)

AGAINST THE ORDER/JUDGMENT IN CC 2201/2011 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II,THRISSUR

PETITIONER/S:

DAVI V.THATTIL,
AGED 71 YEARS,
S/O VARGHEESE,THATTIL PIDIYATH HOUSE,
CHELAKKOTTUKARA,KURIACHIRA.P.O,
THRISSUR-680006.

BY ADVS.
SRI.LINDONS C.DAVIS
SMT.E.U.DHANYA
SRI.RAJITH DAVIS

RESPONDENT/S:

1 **ROSY JOSEPH,AGED 70 YEARS,**
ERINJERY HOUSE, NELLIKKUNNU SOUTH BAZAR,
EAST FORT,THRISSUR-680005.

2 **SOUMYA KURIES AND LOANS(P)LTD,**
REPRESENTED BY OFFICIAL LIQUIDATOR,
HIGH COURT OF KERALA,
COMPANY LAW BHAVAN,3RD FLOOR,
THRIKKAKARA.PO, KOCHI-682021.

3 **STATE OF KERALA,**
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM,KOCHI-682031.

R2 BY ADV. K.MONI

OTHER PRESENT:

SMT.M.K.PUSHPALATHA, SR.PP

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 01.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

In this Crl.M.C., the prayer is to quash Annexure-A1 complaint filed by the first respondent herein before the court below alleging offence punishable under Section 138 of the Negotiable Instruments Act.

2. Service is complete. However, there is no appearance for respondent Nos.1 to 2.

3. Heard the learned counsel for the petitioner and the learned Senior Public Prosecutor.

4. The petitioner was made as the first accused in Annexure-A1 complaint as he was the Managing Director of Soumya Kuries

and Loans(P) Ltd during the period when the transaction took place.

5. The learned counsel for the petitioner has argued that since the company was ordered to be liquidated prior to the arising of the cause of action in this case, Annexure-A1 complaint is not maintainable. The learned counsel relied on the decision of this Court in Francis K.P. and Others v. Fair Kuries Pvt. Ltd. and Others [2018(3) KHC 101] to support his argument.

6. This Court in Francis K.P. (Supra) held in Para 27 thus:-

> "The upshot of the above discussion is that if the cause of action arose subsequent to the order of

winding up of the company, it cannot be said that the offence under S.138 of the N.I. Act is completed. The date on which the cheque was handed over would have no bearing. The cause of action arises only when the cheque presented for encashment is dishonoured and the drawer fails to make payment of the cheque amount within the statutory period, after the receipt of demand notice. Therefore, if the company is wound up as per the order of the Court prior to the completion of the offence under S.138 of the N.I. Act, no complaint against the company and its erstwhile Directors, is maintainable. On the other hand, if the company is ordered to be wound up by the Court subsequent to the completion of the offence under S.138 of the N.I. Act, the prosecution under S.138 of the N.I.Act is maintainable against the company and its Directors notwithstanding the order passed by the Court for winding up of the company".

7. The company was ordered to be would up by the High Court as per Annexure-A2 judgment dated 15.11.2010. Annexure-A1 complaint would show that the cheque in this case was dishonoured as per memo dated 20.10.10 issued from the bank. The demand notice was sent to the petitioner on 3.11.2010. The cause of action would arise only when the drawer failed to make the payment of the cheque amount within the statutory period of 15 days after the receipt of the demand notice. The date of receipt of the demand notice is not stated in the complaint. However, since the demand notice was issued to the petitioner only on 3.11.2010, the offence under Section 138 of

the N.I. Act was complete only after 15.11.2010, which was the date of order of winding up of the company. Thus the cause of action arose in this case only after the order of winding up of the company.

Since the cause of action arose in this case after the order of winding up of the company, Annexure-A1 complaint filed alleging the offence under Section 138 of the Negotiable Instruments Act is not maintainable in view of the decision in Francis K.P.(Supra) and hence the summoning order issued by the court below is bad in law. Consequently, this Crl.M.C. stands allowed and the summoning order stands set

aside and Annexure-A1 complaint stands quashed.

Sd/-

B. SUDHEENDRA KUMAR,
JUDGE

STK

APPENDIX

PETITIONER'S/S EXHIBITS:

ANNEXURE A1	**TRUE COPY OF THE COMPLAINT IN C.C.NO.2201/2011 OF THE JFCM COURT-II, THRISSUR.**
ANNEXURE A2	**A COPY OF THE ORDER IN C.P.NO.11/2020 DATED 5.11.2010 PASSED BY THIS HONOURABLE COURT.**