**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR**

**FRIDAY, THE 04TH DAY OF DECEMBER 2020 / 13TH AGRAHAYANA, 1942**

**Crl.MC.No.3797 OF 2020(D)**

**AGAINST THE ORDER/JUDGMENT IN L.P.No.33/2018 OF CHIEF JUDICIAL MAGISTRATE, PALAKKAD**

**AGAINST THE ORDER/JUDGMENT IN ST 259/2016 OF CHIEF JUDICIAL MAGISTRATE, PALAKKAD**

**PETITIONER/S:**

**V.M.REJI,**
**AGED 51 YEARS,**
**S/O.JOSEPH, PROPRIETOR, AMRITHAM BIO ORGANIC RESEARCH AND DEVELOPMENT CENTER, ANJUMORTY MANGALAM, VADAKKENCHERY, PALAKKAD-678 682.**

**BY ADVS.**
**SRI.SAJAN VARGHEESE K.**
**SRI.LIJU. M.P**

**RESPONDENT/S:**

1 **SELVAN ALIAS SELVARAJ,**
**AGED 58 YEARS,**
**S/O.SUBRAMANIA MOOTHAN, PROPRIETOR,**
**M/S.MAHALAKSHMI FINANCE, P.V.TOWER,**
**T.B.ROAD, PALAKKAD-678 001.**

2 **STATE OF KERALA**
**REP BY THE PUBLIC PROSECUTOR,**
**HIGH COURT OF KERALA-682 031.**

**R2 SMT.M.K.PUSHPALATHA, SR.P.P.**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 04.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**ORDER**

**The petitioner is the accused in S.T.No.259/2016 on the files of the court below. The above case arose out of a complaint filed by the first respondent herein before the court below alleging offence under Section 138 of the Negotiable Instruments Act. The petitioner has filed this Crl.M.C. praying for quashing Annexure-A complaint and all further proceedings in S.T.No.259/2016 on the files of the court below.**

**2. Service is complete. However, there is no appearance for the first respondent.**

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

**4. The learned counsel for the petitioner has argued that since the cheque was drawn in favour of M/s.Mahalakshmi Finance, which is a proprietary concern, the complaint filed by the proprietor is not maintainable. Annexure-C is the copy of the cheque, which would show that the cheque was issued in favour of M/s.Mahalakshmi Finance. It appears from Annexure-A complaint that the complaint was filed by the Proprietor of M/s.Mahalakshmi Finance.**

**5. Now the question to be considered is as to whether the said complaint is**

**maintainable or not.**

**6. The Hon'ble Supreme Court in M/s.Sankar Finance & Investments v. State of Andhra Pradesh and Others [2008(4) KHC 352] held in Para 9 thus:-**

> **"Therefore where the payee is a proprietary concern, the complaint can be filed: (i) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the 'payee'; (ii) the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and (iii) the proprietor or the proprietary concern represented by the attorney holder under a Power of Attorney executed by the sole proprietor.**

**7. In this case, the complaint was filed by Selvan alias Selvaraj, describing**

**himself as the Proprietor of M/s.Mahalakshmi Finance. In the first paragraph of the complaint, it is clearly averred that the complainant is the proprietor of M/s.Mahalakshmi Finance, a proprietary concern. This would show that the complaint was filed by the first respondent describing himself as the proprietor of the proprietary concern. Since Annexure-A complaint was filed by the proprietor of the proprietary concern, Annexure-A complaint is perfectly maintainable in law. Therefore, the argument in this regard advanced by the learned counsel for the petitioner cannot be sustained.**

**8. No other argument has been advanced by the learned counsel for the petitioner to support his prayer for quashing Annexure-A complaint. In view of the above, I do not find any reason to quash Annexure-A complaint.**

**In the result, this Crl.M.C. stands dismissed.**

**However, I make it clear that if the petitioner surrenders before the court below within three weeks from today, and applies for regular bail, after giving copy of the bail application to the learned counsel for the first respondent in advance, the court below shall consider and dispose of the application for bail in accordance with law,**

**as expeditiously as possible, preferably on the date of filing of the application itself.**

**Sd/-**

**B. SUDHEENDRA KUMAR,**
**JUDGE**

STK

# APPENDIX OF Crl.MC 3797/2020

**PETITIONER'S/S EXHIBITS:**

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| **ANNEXURE-A** | **CERTIFIED COPY OF THE COMPLAINT IN ST.NO.259/2016 ON THE FILE OF CHIEF JUDICIAL MAGISTRATE COURT, PALAKKAD.** |
| **ANNEXURE-B** | **TRUE COPY OF THE NOTICE DATED 09/04/2013 ADDRESSED TO THE PETITIONER.** |
| **ANNEXURE-C** | **TRUE COPY OF THE CHEQUE BEARING NO.000003 DATED 15/02/2013 OF HDFC BANK.** |