**Salil Kumar Vs. State of Kerala**

**Salil Kumar Vs. State of Kerala**

**SooperKanoon Citation** : sooperkanoon.com/1119725

**Court** : Kerala

**Decided On :** Jan-24-2014

**Judge** : Honourable Mr. Justice P.Ubaid

**Appellant** : Salil Kumar

**Respondent** : State of Kerala

**Judgement** :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID FRIDAY, THE24H DAY OF JANUARY20144TH MAGHA, 1935 Crl.MC.No. 1785 of 2013 () -------------------------- AGAINST ST NO.3124/2008 of J.F.C.M - VI, ERNAKULAM PETITIONER/ACCUSED : ------------------- SALIL KUMAR, S/O. VASUDEVAN, PUTHIYAYIL HOUSE, H.NO.10/648, EDACHIRA ROAD, KUSUMAGIRI P.O., KAKKANAD, ERNAKULAM-682 030. BY ADVS.SRI.S.M.PREM SMT.K.P.SANTHI SMT.BEENA JOHN SRI.R.JAYAKRISHNAN (MUTHUKULAM) SMT.I.J.ANIE SMT.S.SHARMILA RESPONDENTS/STATE AND COMPLAINANT : -------------------------------- 1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. MUTHOOT VEHICLE AND ASSET FINANCE LIMITED, FORMERLY MUTHOOT LEASING AND FINANCE LIMITED) MUTHOOT CHAMBERS, KURIAN TOWERS, BANERJI ROAD, KOCHI-18 REPRESENTED BY ITS POWER OF ATTORNEY HOLDER BABY SUJATHA, AGED30YEARS, D/O.

M.R.VALSALAN, SAI SOORAJ, THAMARASSERY ROAD, POONITHURA ROAD, TRIPUNITHURA. R2 BY ADV. SRI. SABU.S.(KALLARAMOOLA) BY PUBLIC PROSECUTOR SRI.R.RANJITH THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON2401-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Crl.MC.No. 1785 of 2013 () --------------------------- APPENDIX PETITIONER'S EXHIBITS ---------------------- ANNEXURE I : COPY OF THE LETTER DTD.26.10.2009 OF THE PETITIONER. ANNEXURE II: COPY OF THE LETTER DTD.16.11.2009 OF THE2D RESPONDENT. ANNEXURE III: COPY OF THE COMPLAINT IN ST NO.3124/2008 OF JFMC-VI, ERNAKULAM. RESPONDENTS' EXHIBITS : NIL --------------------- //True Copy// P.A to Judge ab P.UBAID, J.

---------------------------------------- Crl.M.C.No. 1785 of 2013 ----------------------------------------- Dated this the 24th day of January, 2014

ORDER

The petitioner herein had availed a vehicle loan from the 2nd respondent in the year 2006, agreeing to make payment in instalments. When the petitioner committed default in instalment payments, the 2nd respondent initiated proceedings for recovery, and in such a situation the petitioner surrendered the vehicle. The 2nd respondent sold the said vehicle in auction, but the sale price could not satisfy the amount due from the petitioner. Thereafter, several claims were made, and during the course of the transactions the petitioner herein had issued a cheque in favour of the 2nd respondent. When the petitioner failed to make payments, even after repeated requests, the 2nd respondent presented the said cheque for collection, but it was bounced due to insufficiency of funds in the account of the petitioner. Now, the petitioner has been facing a prosecution under Section 138 of the N.I Act. The said criminal prosecution is sought to be quashed under Section 482 of the Code of Criminal Procedure on two grounds. One is that, that much amount claimed by the 2nd respondent under the disputed cheque is not exactly due, or that there is much disparity Crl.M.C.No. 1785 of 2012 2 between the cheque amount, and the amount claimed by the 2nd respondent by previous notices. The second ground is that on surrender of the vehicle by the petitioner the loan agreement stood cancelled, and so the cheque issued by him in connection with the said agreement cannot be enforced.

2. This Court finds on an examination of the records that the prosecution now pending against the petitioner cannot be quashed under Section 482 of the Code of Criminal Procedure on the two grounds alleged by the petitioner. As regards the difference in amount, the material question for consideration in a prosecution under Section 138 of the N.I Act is whether there is difference between the cheque amount and the amount claimed in the statutory notice. The petitioner can very well make contentions before the trial court as regards the actual amount due from him, if he has got a definite case that the amount shown in the disputed cheque is not in fact due from him. As regards the other ground this Court finds that surrender of the vehicle will not make the cheque issued by the petitioner unenforceable under the law. Whether the loan agreement stands cancelled or not, is a matter to be decided in civil action. Any way, such matters also can be agitated by the petitioner before the trial court to Crl.M.C.No. 1785 of 2012 3 substantiate his contentions that the cheque in question is not enforcible under the law, or that it was not executed in discharge of a legally enforcible liability. Without prejudice to the rights of the petitioner to make such necessary contentions during trial before the trial court, this petition can be dismissed. In the result, this Criminal Miscellaneous Case is dismissed without prejudice to the right of the petitioner to make necessary contentions before the trial court as regards the enforceability of the cheque in question. Sd/- P.UBAID JUDGE ab