Sudarshan Vs. State of Kerala

Sudarshan Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/1154789

Court : Kerala

Decided On : Jul-03-2014

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Sudarshan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD THURSDAY,THE3D DAY OF JULY2014/12TH ASHADHA, 1936 Crl.MC.No. 4035 of 2012 () -------------------------- CC2032003 of JUDICIAL FIRST CLASS MAGISTRATE COURT-I,KOZHIKODE PETITIONER(S)/1ST ACCUSED: -- SUDARSHAN S/O.KARUNAKARAN, CHILANKA HOUSE, KOTTULI P.O. KOZHIKODE. BY ADV. SRI.L.RAJESH NARAYAN IYER RESPONDENT(S)/COMPLAINANT: -- 1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM2 GADATHARAN, S/O.BANU PRAKASH, 3/604, MANIPURAM NADAKKAVU P.O.,KOZHIKODE -673011. R2 BYADV.SRI.THOMAS ANTONY R1 BY PUBLIC PROSECUTOR SHRI JUSTIN JACOB THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON0307-2014, ALONG WITH CRL.MC NOS.4036 OF2012& 4037 OF2012 THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CRL.MC NO.4035/2012 APPENDIX PETITIONER(S) EXHIBITS

ANNEXURE A: TRUE COPY OF THE COMPLAINT IN C.C.NO.203/2003 ON THE FILES OF THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATECOURT-1, KOZHIKODE DATED55/2003. ANNEXURE B: TRUE COPY OF THE PROCLAMATION UNDER S.82 DATED2211/2012. RESPONDENTS' EXHIBITS : NIL //TRUE COPY// A.HARIPRASAD, J.

------------------------------------- Crl.M.C.Nos.4035 of 2012 4036 of 2012 & 4037 of 2012 ------------------------------------- Dated this the 3rd day of July, 2014. COMMON

ORDER
Petitions filed under Section 482 of the Code of Criminal Procedure (in short, "Cr.P.C.").

2. Contesting parties in all these petitions are the same. Petitioner is the 1st accused in three separate private complaints filed by the 2nd respondent before the Courts of Magistrates in Kozhikode.

3. Brief allegations, common in all the complaints, are as follows: The accused persons, three in number, were conducting a commercial establishment by name Concord Leasing and Hire Purchase Private Limited, Kozhikode. According to the averments in the complaints, petitioner/1st accused was the Managing Director of the Company and 2nd accused was functioning in accordance with the directions given by the 1st accused. The complainant and the 1st accused (petitioner) were persons known to each other. Petitioner requested the complainant to deposit money in his business establishment and he offered a handsome interest as return. As per the alleged inducement, the complainant deposited Crl.MC Nos.4035, 4036 & 4037/2012 2 various amounts in the business concern run by the petitioner. Even though the petitioner had paid interest for some time, later he did not pay interest and not even the principal amount after maturity period. It is further alleged that the petitioner with a dishonest intention transferred his properties to the name of his wife, the 3rd accused. Specific allegations of dishonest intention to cheat the complainant have been averred in the complaints.

4. Heard the learned counsel for the petitioner and the learned counsel for the complainant. Learned Public Prosecutor is also heard.

5. I have carefully perused the complaints. Learned counsel for the petitioner submitted that the allegations in the complaints will not make out an offence of cheating defined under Section 415 of the Indian Penal Code (in short, "IPC"). According to him, this is a civil dispute, at the most. It is submitted on behalf of the petitioner that there was no inducement to deliver cash to the petitioner. The depositors voluntarily came and deposited money with the establishment in which, the petitioner was a part at one point of time. It is also argued by the learned counsel for the petitioner that the petitioner severed all connections with the Company on 09.08.2002. The alleged deposits were made only on 25.08.2002. It is, therefore, contended that the petitioner has no responsibility in the conduct of the establishment. Crl.MC Nos.4035, 4036 & 4037/2012 3 6. Per contra, learned counsel for the complainant would contend that the disputed deposits were made in the year 2001. It is specifically contended that the amounts were given to the petitioner and he himself issued the receipts evidencing the deposits. However, this is a question of fact, which cannot be determined in a proceeding under Section 482 Cr.P.C. Learned counsel for the complainant submitted that in C.C.No.76 of 2003 before the Chief Judicial Magistrate Court, Kozhikode and C.C.No.202 of 2003 pending before the Judicial First Class Magistrate Court-I, Kozhikode steps under Sections 82 and 83 Cr.P.C. have been taken as the accused had abstained from court. After taking steps, the cases were transferred to the Long Pending Register. Considering the facts brought out at the time of hearing, I am not inclined to invoke the jurisdiction under Section 482 Cr.P.C. in these matters. However, the petitioner is free to take up appropriate legal contention regarding his non- liability in the alleged criminal transaction. Learned counsel for the petitioner submitted that a direction may be given to the courts below to consider the plea of discharge without insisting on his appearance. Considering the fact that the petitioner has abstained from court in the criminal proceedings, I do not wish to issue any direction to consider the plea of discharge in his absence. However, if the petitioner is able to give valid reasons to substantiate his submission, the courts below are free to Crl.MC Nos.4035, 4036 & 4037/2012 4 consider the matter in accordance with law. With these observations, these petitions are dismissed. All pending interlocutory applications will stand dismissed. A. HARIPRASAD, JUDGE. cks