Ksfe Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1160988

Court : Kerala

Decided On : Aug-06-2014

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Ksfe

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD WEDNESDAY,THE6H DAY OF AUGUST201415TH SRAVANA, 1936 Crl.MC.No. 2522 of 2013 () -------------------------- CC. 503/2013 of JUDICIAL FIRST CLASS MAGISTRATE COURT.-II,THAMARASSERY PETITIONER(S)/ACCUSED1TO5 --- 1. KERALA STATE FINANCIAL ENTERPRISES LTD. REPRESENTED BY MANAGING DIRECTOR HEAD OFFICE, THIRUVANANTHAPURAM REP.BY MANAGING DIRECTOR.

2. MANAGER KERALA STATE FINANCIAL ENTERPRISES LTD. THIRUVAMBADY BRANCH-KOZHIKODE (DURING THE PERIOD1010.2012).

3. CASHIER KERALA STATE FINANCIAL ENTERPRISES LTD. (DURING THE PERIOD - 10.10.2012).

4. MANAGER (PRESENT) KERALA STATE FINANCIAL ENTERPRISES LTD. THIRUVAMBADY BRANCH, KOZHIKODE.

5. CASHIER (PRESENT) KERALA STATE FINANCIAL ENTERPRISES LTD. THIRUVAMBADY, KOZHIKODE. BY ADV. SRI.LAL GEORGE RESPONDENT(S)/RESPONDENTS & PETITIONER: -- 1. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR OFFICE OF THE ADVOCATE GENERAL, ERNAKULAM.

2. SONIYA GEORGE D/O. GEORGE, NAMBIAPARAMBIL HOUSE, KODANCHERRY NOW RESIDING ATULLATTIL HOUSE, KOOMBARA P.O. KOZHIKODE. R2 BYADV.SRI.A.RANJITH NARAYANAN R2 BYADV.SRI.S.K.SAJU R2 BYADV.SMT.A.SIMI R1 BY PUBLIC PROSECUTOR SHRI N.SURESH THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON0608-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Crl.MC.No. 2522 of 2013 () --------------------------- APPENDIX PETITIONER(S)' EXHIBITS ------------------------------------ ANNEXURE A1 : COPY OF THE CASH RECEIPT DTD.10.10.2012. ANNEXURE A2 : COPY OF DAY END REPORT PERTAINING TO1010.2012. ANNEXURE A3 : COPY OF THE PERSONAL LEDGER OF THE COMPLAINANT IN CHITTY NO.5/2008. ANNEXURE A4 : COPY OF THE CHITTY LEDGER PERTAINING TO THE CHITTY NO.5/2008, SUBSCRIBED BY THE COMPLAINANT. ANNEXURE A5 : CERTIFIED COPY OF THE CRIMINAL COMPLAINT DTD.5.3.2013. ANNEXURE A6 : CERTIFIED COPY OF THE SWORN STATEMENT RECORDED FROM THE2D RESPONDENT. ANNEXURE A7 : CERTIFIED COPY OF THE PROCEEDINGS DTD.8.4.2013 TAKING COGNIZANCE. RESPONDENT(S)' EXHIBITS: NIL -------------------------------------- //TRUE COPY// A.HARIPRASAD, J.

------------------------------------- Crl.M.C. No.2522 of 2013 ------------------------------------- Dated this the 6th day of August, 2014.

ORDER

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

2. Petitioners are accused 1 to 5 in a private complaint filed by the 2nd respondent before the Judicial First Class Magistrate Court-II, Thamarassery, which is

numbered as C.C.No.503 of 2013. The offences alleged are punishable under Sections 406, 420, 467, 468 and 471 read with Section 149 of the Indian Penal Code(in short, "IPC").

3. Brief allegations in the complaint are as follows: The complainant subscribed to a chit bearing No.5/2008 run by the 1st accused company. Besides, she subscribed to five other chits and her husband subscribed to four chits with the company. The complainant, who wanted to bid the said chitty, went to the office of the 1st accused company on 10.10.2012. She paid `1,41,164/- on that day after availing the One Time Settlement Scheme (in short, "OTS Scheme"). According to the petitioners, the complainant and her husband had defaulted the instalments starting from 23rd onwards and after availing the OTS Scheme, the defaulter had to clear the entire arrears of instalments upto the date of Crl.MC No.2522/2013 2 auction. For paying the said amount, the 1st accused company issued Annexure-A1 receipt. Thereafter, on 28.08.2013, the complainant went to the office of the 1st accused company for clearing the liability. When Annexure-A1 receipt was shown, the officers of the 1st accused company, viz., the other accused, informed the complainant that on 10.10.2012 she had not remitted `1,41,164/- as revealed from Annexure-A1 receipt, but she had remitted only `1,32,996/- on that date. It is the further averment in the complaint that the accused insinuated and insulted the complainant that Ext.A1 is a receipt falsely cooked up by the complainant and her husband. The complainant contended further that the staff of the 1st accused company threatened her that unless Annexure-A1 receipt was handed over to the Manager, they would file a criminal complaint against the complainant for forging false documents. Shocked and surprised by the attitude of the accused persons, the complainant did not pay `1,50,000/- to the chitty account which she was ready to pay. She remitted the amount in Sugama account and went back. It is the allegation that she had paid `1,41,164/- on 10.10.2012 and the accused persons did not properly account for the same causing a loss of `8,168/- to the complainant. With these allegations, she filed Annexure-A6 complaint.

4. Heard Shri Lal George, learned counsel appearing for the petitioners/accused and Shri A. Ranjith Narayanan, learned counsel for the Crl.MC No.2522/2013 3 2nd respondent/complainant. Shri N.Suresh, learned Public Prosecutor is also

heard.

5. Learned counsel for the petitioners contended that the accused are innocent and the accounts showed a wrong entry due to the defect in the computer system. To fortify this contention, a circular issued by the 1st accused company on 08.10.2012 was relied on. According to the learned counsel for the petitioners, the circular issued by the head office of the 1st accused company dated 08.10.2012 was received in the office only on 10.10.2012. The computer system could not be updated in tune with the circular received on the date of the alleged incident. Annexure-A3 is referred to by the learned counsel for the petitioners to contend that the account pertaining to the complainant would show that on 10.10.2012, she was credited with an amount of `1,32,996/- and on 20.03.2013, two entries were made, viz., `7,184/- and `1,004/- to her credit with effect from 10.10.2012 and 20.03.2013 respectively. It was done after finding out the mistakes in the computer system. Learned counsel also produced for scrutiny the cash scroll of 10.10.2012 to contend that as the last entry, excess collection of `7,184/- is shown in the account. It was actually due to the fault of the computer system. According to him, there was no wilful or intentional act on the part of the accused persons to defraud or cheat the complainant. Crl.MC No.2522/2013 4 6. Per contra, learned counsel for the 2nd respondent/complainant submitted that only on account of filing the complaint on 05.03.2013, the accused persons reversed the entry and credited the amounts to the account of the complainant. It is also contended that if the complainant had not approached the court for redressal of grievances, the accused would not have credited the amount and thereby the complainant would have lost `8,168/- and also her reputation.

7. At the time of hearing, learned counsel for the complainant submitted that the offence under Section 477A IPC is also attracted in this case going by the allegations in the complaint. Learned counsel for the petitioners strongly opposed this contention by contending that the essential requirement for attracting an offence under Section 477A IPC is that there must be wilful and intentional act to defraud, destroy, alter, mutilate or falsify any book or valuable security or account belonging to the employer in the possession of the clerk. According to the learned counsel for the petitioners, there is no allegation in the complaint that there was

any wilful act done by the accused 2 to 5 to defraud the complainant. Controverting this argument, learned counsel for the complainant contended that the complainant has specifically averred that the accused persons, with an intention to cause unlawful loss to the complainant and also to make unlawful gain to them, disowned Annexure-A1 receipt when it Crl.MC No.2522/2013 5 was produced for scrutiny at a later time. However, I am of the view that whether there was a wilful or intentional attempt to defraud, alter or falsify the account is a matter to be proved at the time of investigation. It is an admitted case that the complaint is at a nascent stage. On account of the stay order passed by this Court, the investigation has not advanced in this matter. Since the vexed questions cannot be decided in a proceeding under Section 482 Cr.P.C., I do not venture to resolve the issue at this stage of the proceedings. Therefore, without making any observation regarding the merits of the rival contentions, I find that the petitioners can take recourse to law at a later point of time, if the investigation reveals any complicity of them in this matter. With this observation, the Crl.M.C. is closed. All pending interlocutory applications will stand dismissed. A. HARIPRASAD, JUDGE. cks