

Manuja. S. vs State of Kerala

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Court : Kerala Orders

Decided On : Feb-29-2024

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : Crl.MC/2014/2024

Appellant : Manuja. S.

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS THURSDAY, THE 29TH DAY OF FEBRUARY 2024 / 10TH PHALGUNA, 1945 ST 277/2022 OF JUDICIAL MAGISTRATE OF FIRST CLASS - I, KANNUR PETITIONER/ ACCUSED : MANUJA. S., AGED 40 YEARS, W/O. PRAMOD. P, MEENETHEVELI, CHARAMANGALAM, MUHAMMA P.O, ALAPUZHA, PIN - 688 525

BY ADVS. B.PRAMOD BIJU VIGNESWAR ATHUL M.V. RESPONDENT/ STATE & COMPLAINANT : 1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 2 AKHIL K., S/O. PAVITHRAN,

THATTANTEVALAPPIL HOUSE, CHEKKIKULAM P. O, KANNUR, PIN - 670 592 SRI. M.C. ASHI, PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29.02.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

Crl.M.C.No.2014 of 2024 Dated this the 29th day of February, 2024

ORDER

Petitioner is the accused in S.T.No.277 of 2022 on the files of the Judicial First Class Magistrate's Court, Kannur. She is facing a prosecution for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act'). Petitioner challenges the proceedings initiated against her.

2. Sri.B.Pramod, the learned counsel for the petitioner contends that the allegations in the complaint do not constitute the foundational

facts for prosecuting the accused for the offence under Section 138 of the

N.I. Act, especially since the manner and nature in which the alleged liability arose has not been pleaded. It is also stated that as a matter of fact, no amounts are due from the petitioner to the complainant and therefore the entire prosecution is initiated with malafides and without any basis.

3. I have heard Sri.M.C.Ashi, the learned Public Prosecutor as well.

4. A perusal of the complaint produced as Annexure A1 reveals

that the complainant has alleged that the amount is due to him on the basis of a sale transaction in respect of a car bearing Registration No.KL-41-F-9666 and the cheque was issued to clear the liability of Rs.11,50,000/-. Whether there was any actual liability or not and whether the petitioner was liable to pay the amount mentioned in the cheque are all matters for trial, especially in the light of the

presumptions that are available to the holder of a cheque as per the provisions of the N.I. Act.

5. Since the contentions now raised by the petitioner are all

matters which require proof and appreciation of evidence, I am of the view that this is not a fit case where the provisions of Section 482 of Cr.P.C. can be invoked. Hence, I find no merit in this CrI.M.C. and the same is dismissed. Sd/- BECHU KURIAN THOMAS, JUDGE RKM APPENDIX OF CRL.MC 2014/2024 PETITIONER'S ANNEXURES : Annexure A1 TRUE COPY OF THE COMPLAINT DATED

20.01.2022 IN S. T. NO. 277/2022 ON THE FILES OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT - I, KANNUR. Annexure A2 TRUE COPY OF THE CHEQUE DATED 08.12.2021 BEARING CHQ. NO. 10115985 OF FEDERAL BANK, PUTHENANGADI BRANCH, ALAPPUZHA ALLEGEDLY ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT. Annexure A3 TRUE COPY OF THE AGREEMENT DATED 07.09.2019 ALLEGEDLY EXECUTED BETWEEN THE PETITIONER AND THE 2ND RESPONDENT AND PRODUCED ALONG WITH IN ANNEXURE A-1 COMPLAINT.

Annexure A4 TRUE COPY OF THE DEMAND NOTICE DATED 23.12.2021 ISSUED BY THE 2ND RESPONDENT'S LAWYER. Annexure A5 TRUE COPY OF THE REPLY NOTICE DATED 10.01.2022 ISSUED BY THE PETITIONER. Annexure A6 TRUE COPY OF THE COMPLAINT DATED 10.02.2022 IN C. M. P. NO. 361/2022 ON THE FILES OF THE JFCM COURT - I, CHERTHALA. Annexure A7 TRUE COPY OF THE FIR DATED 16.02.2022 IN CR. NO. 128 OF 2022 OF CHERTHALA POLICE STATION.

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