

E.V Anilkumar vs State of Kerala

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Court : Kerala Orders

Decided On : Jul-29-2024

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : Crl.MC/6398/2024

Appellant : E.V Anilkumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS MONDAY, THE 29TH DAY OF JULY 2024 / 7TH SRAVANA, 1946 CRIME NO.66/2022 OF Vazhakulam Police Station, Ernakulam CC NO.1135 OF 2022 OF JUDICIAL FIRST CLASS MAGISTRATE COURT - III, MUVATTUPUZHA PETITIONER/ ACCUSED : E.V ANILKUMAR AGED 46 YEARS, S/O VELAYUDHAN ACHARY, INJIKANDATHIL HOUSE, MEMADANGUP.O, ARAKUZHAVILLAGE, ERNAKULAM DISTRICT, PIN - 686672 BY ADVS. MANSOOR.B.H. SAKEENA BEEGUM RESPONDENT/ STATE/ COMPLAINANT :

1 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 2 STATION HOUSE OFFICER VAZHAKULAM POLICE STATION, ERNAKULAM DISTRICT, PIN - 686 670 3 ANIL RAJ D BRANCH MANAGER, IDBI BANK, KOTHAMANGALAM BRANCH, KOTHAMANGALAM, ERNAKULAM DISTRICT, PIN - 686691 BY SMT. SREEJA V., PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

----- CrI.M.C.No.6398 of 2024 -----
----- Dated this the 29th day of July, 2024 -----

ORDER

Petitioner is the accused in C.C.No.1135 of 2022 on the files of the Judicial First Class Magistrate's Court-III, Muvattupuzha which arises out of Crime No.66 of 2022 of Vazhakulam Police Station. He challenges the proceedings in the above case in this petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

2. According to the prosecution, the accused had taken a loan of

Rs.9,16,00,000/- from the IDBI Bank, Vazhakulam branch for running a jewellery shop. As security for the loan, petitioner had hypothecated the entire stock of gold ornaments kept in his showroom at Vazhakulam apart from collateral security by mortgage of few items of immovable property besides the personal guarantee. After the loan was granted and when the accused defaulted repayment, the defacto complainant realised that the stock of gold kept in the showroom were imitation gold and not real gold and thereby the accused is alleged to have committed the offences under Sections 120B, 403, 406, 420, 465, 467, 468 and 471 of the Indian Penal Code, 1860.

3. Sri.Mansoor B.H., the learned counsel for the petitioner

submitted that the prosecution allegations would not make out any of the offences alleged as the accused had not done any fraudulent or dishonest act for the purpose of inducing the defacto complainant to sanction the loan facility. It was further stated that even going by the prosecution allegations, what was alleged to be imitation gold were those kept in the showroom and that the loan was supported by other collateral securities including personal guarantee and hence there is no question of any fraudulent or dishonest intention on the part of the petitioner. The learned counsel further submitted that no loss of any nature has befallen the defacto complainant requiring prosecution of the petitioner.

4. Smt.Sreeja V., the learned Public Prosecutor, on the other hand

contended that the gold ornaments kept in the showroom which induced the defacto complainant to grant the loan facility of Rs.9,16,00,000/- were later, after the default occurred in repayment, found to be imitation ornaments and therefore the accused had clearly induced the defacto complainant by fraudulent or dishonest means. It was further submitted that the jurisdiction under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ought not to be invoked at this stage as the disputed persons are all required to be adjudicated after trial.

5. I have considered the rival contentions.

6. A reading of the final report produced as Annexure B indicates

that the accused had induced the bank to grant a facility of a loan of several crores after inducing the defacto complainant to believe that the entire stock in trade displayed in the showroom of the jewellery shop were gold ornaments. Though the learned counsel for the petitioner pointed out that there was a collateral security in the form of immovable property and even if for argument sake it is assumed that the entire loan would have been supported by the collateral security, still that by itself is

not a reason to discard the prosecution case. Further there is also nothing to indicate that the entire loan was supported by the collateral securities offered. The

prosecution allegations and the averments in the complaint indicate that only few items of properties were provided as collateral security. In such circumstances, I am of the view that the disputed questions cannot be decided in this proceeding under Section 528 of the B.N.S.S.

7. In State of Haryana and Others v. Bhajan Lal and Others

[(1992) Supp 1 SCC 335] as well as in State of U.P. v. O.P. Sharma [1996 7 SCC 705], it has been observed that the High Court should be loath to interfere to thwart the proceedings at the initial stage under the inherent power and must allow the law to take its own course. It is also trite that the inherent power should be exercised sparingly and cautiously and only when the court is satisfied that there will be gross miscarriage of justice. Court should not embark upon the reliability or genuineness of the allegations in the final report as held in Mahendra K.C. v. State of Karnataka and Others [(2022) 2 SCC 129].

Hence, I find no merit in this Crl.M.C. and it is dismissed. Needless to mention that if petitioner intends to file a discharge petition, he is at liberty to do so, provided it is open to seek such a relief in accordance with law. Sd/- BECHU KURIAN THOMAS, JUDGE RKM APPENDIX OF CRL.MC 6398/2024 PETITIONER'S ANNEXURES : Annexure A CERTIFIED COPY OF THE CMP :43/2022 OF JUDICIAL FIRST CLASS MAGISTRATES COURT,MUVATTUPUZHA Annexure B CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO:66/2022 OF VAZHAKULAM POLICE STATION

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