



2023/KER/51535

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 21ST DAY OF AUGUST 2023 / 30TH SRAVANA, 1945

CRL.MC NO. 983 OF 2018

AGAINST THE ORDER/JUDGMENT CC 234/2016 OF JUDICIAL MAGISTRATE OF
FIRST CLASS - IV, ERNAKULAM

PETITIONER/2ND ACCUSED:

ARVIND SINGH RAJPOOT
AGED 34 YEARS
S/O.LATE RAMESH CHANDRA RAJPOOT,
XENIUM HOLIDAYS PVT. LTD., 77,
1ST FLOOR, JANAKPURI EAST,
METRO STATION GATE NO.3,
NEW DELHI.110 058.

BY ADVS.SRI.R.PADMARAJ SRI.P.J.ANTONY JOSEPH
MARIADASSRI.R.AJITH KUMAR V.K.EDOM

RESPONDENTS/COMPLAINANT/1ST ACCUSED & STATE:

- 1 M/S.INTER SIGHT HOLIDAYS PVT. LTD
28/343, BENISTA BUILDING, SA ROAD,
PANAMPILLY NAGAR, KOCHI.682 036, KERALA,
REPRESENTED BY ITS MANAGING DIRECTOR
MR. ABRAHAM GOERGE.
- 2 MS. INVITEE INDIA HOLIDAYS PVT. LTD.
24, SEWAK PARK, DWARAKA MODE,
UTTAM NAGAR, METRO STATION PILLAR NO.771,
NEW DELHI.110 059.
- 3 THE STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY ADVS.SRI.ARUN THOMAS
SRI.JENNIS STEPHEN
SMT.KARTHIKA MARIA
SMT.MARIA ROY
SRI.SANTHOSH MATHEW
SRI.VIJAY V. PAUL
SMT.VEENA RAVEENDRAN
SRI.RENJIT GEORGE, SR.PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
21.08.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



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ORDER

Dated this the 21st day of August, 2023

This is a petition filed under Section 482 of the Code of Criminal Procedure.

2. The 2nd accused in C.C.234/2016 on the files of the Judicial First Class Magistrate Court-IV, Ernakulam seeks quashment of complaint on the ground that the complainant has no *locus standi* to prosecute the 2nd accused on alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act' for short)

3. Heard. Perused the relevant documents.

4. The learned counsel for the petitioner submitted that Annexure F, F1 and F2 cheques for Rs.50,000/-, Rs.1,00,000/- and Rs.1,00,000/- respectively, where from the prosecution emanates, were issued in the name of 'Intersight Tours and Travels Pvt. Ltd'. But on dishonour of the cheque, the Director



of Intersight Holidays Pvt.Ltd. issued legal notice and complaint also was filed by Intersight Holidays Pvt.Ltd.

5. In view of the submission, the question arises for discussion is *whether a third party can prosecute the drawer of cheque for the offence punishable under Section 138 of the NI Act ?*.

6. On perusal of Annexure F, F1 and F2 cheques in comparison with Annexure G legal notice and Annenxure H copy of complaint, the submission appears to be convincing. That is to say, Annexure F, F1 and F2 cheques were issued in the name of 'Intersight Tours and Travels Pvt. Ltd' and the name of the complainant is 'Intersight Holidays Pvt.Ltd.'

7. The learned counsel for the respondents also could not justify filing of complaint by Intersight Holidays Pvt.Ltd. in relation to three cheques issued in favour of Intersight Tours and Travels Pvt. Ltd.

8. On perusal of the complaint, nothing stated as to change of name of 'Intersight Tours and Travels Pvt.Ltd.' to



'Intersight Holidays Pvt.Ltd.' As per Section 142 (a) of the NI Act, no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque. Therefore, a complaint alleging commission of offence punishable under Section 138 of the NI Act shall be filed either by the 'payee' or by the 'holder in due course' of the said cheque and no other person entitled to lodge a complaint and the court shall take cognizance acting on a complaint in writing filed by the 'payee' or 'holder in due course'

9. In the present complaint, nothing stated that the complainant even though is not a 'payee', he is the 'holder in due course' of Annexure F, F1 and F2 cheques, as defined under Section 9 of the N.I.Act that "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having



sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

10. Thus, *prima facie*, it appears that the present complainant has no *locus standi* to prosecute the second accused in terms of Section 142(a) of the N.I.Act and as such, the complaint is liable to be quashed. Therefore, I am inclined to invoke the power under Section 482 of Cr.P.C. in this particular case and accordingly, this petition stands allowed.

It is ordered that the complaint against the petitioner pending before the Judicial First Class Magistrate Court-IV Ernakulam as C.C.No.234/2016 and the proceedings thereof stand quashed.

**Sd/-
A. BADHARUDEEN
JUDGE**



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APPENDIX OF CRL.MC 983/2018

PETITIONER ANNEXURES

- ANNEXURE A TRUE PHOTOCOPY OF THE REGISTERED COVER RECEIVED FROM THE JFCM-IV COURT IN THE NAME OF XENIUM HOLIDAYS.
- ANNEXURE A1 TRUE PHOTOCOPY OF THE REGISTERED COVER RECEIVED FROM THE JFCM-IV COURT IN THE NAME OF ARAVIND RAJPOOT-XENIUM HOLIDAYS.
- ANNEXURE B TRUE COPY OF THE MEMO FILED ON BEHALF OF THE PETITIONER, BEFORE THE JFCM-IV COURT.
- ANNEXURE C TRUE PHOTOCOPY OF THE RECORDS OBTAINED FROM THE WEB SITE OF MINISTRY OF CORPORATE AFFAIRS WITH REGARD TO THE PETITIONER.
- ANNEXURE D TRUE PHOTOCOPY OF THE LETTER DATED NIL ISSUED BY THE 1ST ACCUSED IN FAVOUR OF 2ND ACCUSED.
- ANNEXURE F TRUE PHOTOCOPY OF CHEQUE NO.118371 OF YES BANK FAVOURING INTERSIGHT TOURS AND TRAVELS PRIVATE LIMITED.
- ANNEXURE F1 TRUE PHOTOCOPY OF CHEQUE NO.118372 OF YES BANK FAVOURING INTERSIGHT TOURS AND TRAVELS PRIVATE LIMITED.
- ANNEXURE F2 TRUE PHOTOCOPY OF CHEQUE NO.118373 OF YES BANK FAVOURING INTERSIGHT TOURS AND TRAVELS PRIVATE LIMITED.
- ANNEXURE G TRUE PHOTOCOPY OF THE REGISTERED NOTICE DATED 22.05.2014 ISSUED ON BEHALF OF INTERSIGHT HOLIDAYS PVT. LTD. TO 1ST ACCUSED AND TO PETITIONER.
- ANNEXURE H CERTIFIED COPY OF THE COMPLAINT IN C.C.NO.234/2016 OF THE JFCM-IV, ERNAKULAM.
- ANNEUXRE E TRUE PHOTOCOPY OF THE E-MAIL COMMUNICATION BETWEEN THE PETITIONER AND THE OFFICERS OF M/S.INTERNSIGHT TOURS AND TRAVELS PVT.