

Penal Provisions U/S 138 NI Act Attack Person Who Issued Cheque, Shifting Of Liability No Ground To Quash Complaint: Kerala High Court

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

A. BADHARUDEEN, J.

Crl.M.C.No.6333 of 2022; 12th October, 2022

ASHA BAWRI versus STATE OF KERALA

Annexure-A1 Complaint in CC 4750/2016 of JMFC (Special Court) for Trial of Sec.138, NI Act Cases (Temporary) Ernakulam

Petitioner / Accused: by Advs. Millu Dandapani, Rameez Nooh

Respondents / Complainant & State: by Senior Public Prosecutor T.R. Renjith

ORDER

This Crl.M.C has been filed under Section 482 of the Code of Criminal Procedure for quashing Annexure-A3 complaint and consequential proceedings on the files of the Judicial First Class Magistrate Court (N.I Act Cases), Ernakulam. The respondents herein are State of Kerala and the defacto complainant.

2. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor. Notice to the 2nd respondent stands dispensed with.

3. In this matter as per Annexure-A3 complaint, the 2nd respondent herein launched prosecution alleging commission of offence under Section 138 r/w 142 of the Negotiable Instruments Act (hereinafter referred to as the 'N.I Act' for convenience) consequent on dishonour of cheque for Rs.5,10,186/- alleged to be issued by the petitioner herein for the value of the goods purchased by the petitioner/accused from the complainant and other charges. While canvassing quashment of the entire proceedings, it is submitted by the learned counsel for the petitioner that as per Annexure-A6 registered notice dated 10.10.2015, the petitioner informed the 2nd respondent that due to some changes in the management from 4.7.2015, all the previous liability would be undertaken by Sri Montu Saikia as per a registered agreement. Therefore, the petitioner herein has no liability in so far as the dishonour of the cheque is concerned and therefore the prosecution is without any basis and the same required to be quashed.

4. Before addressing the prayer, I am tend to refer what are the principles governing quashment of complaints under Section 482 of Cr.P.C?

5. In the decision reported in [1976 (3) SCC 736], **Smt.Nagawwa v. Veeranna Shivalingappa Konjalgi**, the Apex Court enumerated the list of cases where an order of the Magistrate issuing process against the accused can be quashed or set aside. The same are as under:

“(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complainant does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patentlyabsurd and inherently improbable so that no prudent person can ever reach a conclusion that there is a sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuingprocess is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) *where the complaint suffers from fundamental legal defects such as, want of sanction, or absence of a complaint by legally competent authority and the like.”*

That apart, in the decisions reported in [1988(1) SCC 692], **Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre**; [1992 Supp (1) SCC 335], **State of Haryana v. Bhajan Lal**; [1995 (6) SCC 194], **Rupan Deol Bajaj v. Kanwar Pal Singh Gill**; [1996 (5) SCC 591], **Central Bureau of Investigation v. Duncans Agro Industries Ltd.**; [1996 (8) SCC 164], **State of Bihar v. Rajendra Agrawalla**; [1999 (3) SCC 259], **Rajesh Bajaj v. State NCT of Delhi**; [2000 (3) SCC 269], **Medchl Chemicals & Pharma (P) Ltd. v. Biological E.Ltd.**; [2000 (4) SCC 168], **Hridaya Ranjan Prasad Verma v. State of Bihar**; [2001(8) SCC 645], **M.Krishnan v. Vijay Singh**; [2005(1) SCC 122], **Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque**, the Apex Court summarised the principles while quashing a complaint. The principles are as under:

(i) *A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.*

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) *A complaint may also be quashed where it is a clear abuse of the process of the Court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.*

(iii) *The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.*

(iv) *The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.*

(v) *A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.*

6. Thus the law is no more *res integra* on the point that a complaint can be quashed only when it falls under the category of cases as per the principles set out by the Apex Court, extracted herein above.

7. In the case on hand, a cheque issued by the petitioner allegedly towards the value of goods purchased by the accused/petitioner herein was dishonoured when it was presented for collection. Though notice intimating the dishonour and demanding payment of the said amount was issued, the petitioner herein failed to repay the same. Thus the 1st respondent launched the prosecution alleging commission of offence punishable under Section 138 of the N.I Act. The averments in the complaint produced as Annexure-A3 which is pending as C.C.No.4750/2016 before the Judicial First Class Magistrate Court

(N.I Act Cases), Ernakulam would go to show that a *prima facie* case is made out to proceed with the trial to canvass penal consequences against the petitioner. In such a case, shifting of liability after issuance of the cheque as stated in Annexure-A6 has no significance, since penal provisions would attack against the person who issued the cheque. Therefore, mere contention in Annexure-A6 is not a ground to quash the entire proceedings. It is pertinent to note that the materials available before this Court would go to show that the 1st respondent made out a case to proceed further and in such a case if the accused has any contentions otherwise, the same can be put up during trial and in the present case such a quashment of the entire proceedings cannot be justified.

In view of the matter, the petition fails and is accordingly dismissed.

It is specifically ordered that the petitioner shall appear before the trial court as directed by this Court as per interim order dated 16.09.2022 without fail. Further, the trial court is directed to expedite the trial of C.C.No.4750/2016 and dispose of the same at the earliest, at any rate, within a period of 3 months from the date of receipt of this order, taking note of the statutory mandate under Section 143(3) of the N.I Act.

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