

KERALA HIGH COURT

R. Sreenivasan

Vs

State of Kerala

(S Marimuthu, C.J.)

11.10.1999

JUDGMENT

S. Marimuthu, J.

1. This case has been filed under Section 482 of the Criminal Procedure Code, 1973, to quash the proceedings in C. C. No. 387 of 1998 on the file of the Judicial First Class Magistrate Court No. 1, Fort Cochin. The above-said criminal prosecution was launched by the second respondent-complainant on the ground that the petitioner-accused herein borrowed a sum of Rs. 90,000 on December 24, 1995, and another sum of Rs. 90,000 on June 30, 1996, agreeing to repay the same on December 30, 1996, with 24 per cent. interest per annum and as a security for the payment of the above principal amount, he issued two cheques and also a promissory note in favour of the second respondent. Since the payment was not made as promised, the criminal complaint was filed by the second respondent.

2. Learned counsel appearing for the petitioner would contend that the complaint itself is not in accordance with the provisions laid down in Section 138 of the Negotiable Instruments Act. According to learned counsel, the cheque on the basis of which the criminal complaint was filed under Section 138 of the Negotiable Instruments Act ought to have been issued for the sole purpose of discharge of any previous debt or liability. In the instant case, the complaint itself ex facie discloses that only as a security, the cheque was issued for the promissory note alleged to have been executed by the petitioner. For fortifying his contention, he also relies upon the decision of the Andhra Pradesh High Court in *Taher N. Khambat v. Vinayak Enterprises*¹ There it is held as follows (page 476) :

"In the instant case, the appellant advanced some money to the respondents and obtained a pronote. It was stipulated that the respondents should pay interest every month. At the same time the appellant-creditor took a blank signed cheque from the respondents with the understanding that the complainant could fill the other columns in the cheque and present it if the respondents committed default in payment of interest ... So, the appellant

has obtained this blank signed cheque with a view to make use of it, as a threat to the respondents for realisation of the amount. So, it cannot be construed that the respondents had issued the cheque voluntarily for discharge of any debt or legal liability as envisaged under Section 138."

3. A comparative reading of the principle laid down by the Andhra Pradesh High Court and the mandatory provisions laid down in Section 138 of the Negotiable Instruments Act is crystal clear that when a cheque has been issued as a security, no complaint will lie under Section 138 of the Negotiable Instruments Act. Yet another infirmity is found in this case, viz., that the averment in the complaint would be that the cheque was issued only by the petitioner. On the other hand, a notice issued by the second respondent to the petitioner, annexures II and III, would disclose that the cheque was issued by the petitioner along with two other persons, viz., Ashok and Kamashi. In these circumstances, as rightly pointed out by learned counsel, I find no merit on the side of the second respondent to launch a complaint under Section 138 of the Negotiable Instruments Act. Therefore, no purpose will be served by permitting the magistrate to proceed with the criminal prosecution. Therefore, it can be rightly interfered with by this court under Section 482 of the Criminal Procedure Code.

4. In the result, the proceedings in C. C. No. 387 of 1998 on the file of the Judicial First Class Magistrate Court No. 1, Fort Cochin, stand quashed. Criminal miscellaneous case is allowed.

Cases Referred.

1[1995] 1 KLJ 556 ; [1996] 86 Comp Cas 471