

(2007) 06 KL CK 0035

In the High Court Of Kerala

Case No : Criminal MC. No. 570 of 2007 (Y)

Anil Ravindran

APPELLANT

Vs

A. Rama Pai and State of Kerala

RESPONDENT

Date of Decision : 05-06-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245(2), 254(2), 397(2), 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2007) 06 KL CK 0035

Hon'ble Judges : R. Basant, J

Bench : Single Bench

Advocate : Preetha Anil Raveendran, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R. Basant, J.—The petitioner faces indictment in a prosecution u/s 138 of the Negotiable Instruments Act. The cheque is for an amount of Rs. 50,000/- and is shown to be dated 31/12/1999. Notice of demand though duly received was not replied to by the accused. Accused, in the course of the trial, has taken up a contention that the date 31/12/1999 is an alteration/forgery and that when the cheque was handed over, it bore the date 31/12/1997. The last digit 7 has now been altered to 9. This is the crucial contention raised. According to the petitioner, in 1997 when there was a transaction of Rs. 30,000/-, two cheques one for Rs. 30,000/- and Anr. for Rs. 50,000/- were obtained from the petitioner by the complainant who is a money lender and he had kept the same with him. In respect of the cheque for Rs. 30,000/-, Annexure B notice was issued. Annexure C cheque was issued along with the original of Annexure D reply notice by the petitioner himself directly to the advocate.

2. The complainant denied these allegations. Earlier transactions were not disputed. But it was contended that the cheque evidences a liability to repay an amount of Rs. 50,000/- and it always bore the date 31/12/1999. The accused, it

was pointed out by the complainant, had already suffered a civil decree for the amounts shown in this cheque.

3. At the stage of defence evidence, accused filed an application to forward the cheque to the expert to ascertain and report whether there has been any alteration/forgery in respect of the last digit of the year ["7" or "9"]. The learned Magistrate, by the impugned order, rejected the said prayer. The petitioner claims to be aggrieved by the said rejection.

4. An accused is certainly entitled to adduce defence evidence in a summons trial case. Section 245(2) Cr.P.C makes it clear that the accused has no unbridled right to insist on issue of summons to any witness of his choice. The court has to exercise a discretion. Only if the court thinks fit, need summons be issued to any witness. It is common knowledge that in prosecutions u/s 138 of the Negotiable Instruments Act the mischievous goal of protraction of proceedings can be easily achieved by making a request to forward the cheque to the expert. In P.J. Francis Vs. A. Pradeep and Another, it has been stated that the learned Magistrate has to exercise an alert discretion u/s 245(2) Cr.P.C. The totality of circumstances has to be taken into consideration.

5. I take note of the circumstances that the cheque on the face of it does not indicate any correction/forgery. I take note of the further fact that no reply notice was issued raising this contention. It must also be noted that even admittedly there is nothing to show that Annexure D notice was issued to the learned Counsel for the complainant or received by him. It remains a manuscript copy with no proof admittedly to show that it had been sent to the complainant's advocate and received by him. I take note of the further circumstance alertly pointed out by the learned Counsel for the complainant that the cheque to which Annexure B refers to, bears the number 562978 dated 11/12/1997 whereas the cheque in question bears the number 562995 dated 31/12/1999. The counsel alertly points out that even if it were 1997, as contended by the petitioner, the cheque involved in the prosecution comes 18 leaves after the cheque referred to in Annexure B notice, thus knocking the bottom out of the theory, the two cheques were simultaneously handed over. The counsel further points out that the admitted case that both the cheques were filled up in all particulars and were handed over does and must also arouse suspicion and reservation in the mind of the court. If the transaction was only for Rs. 30,000/- why were two cheques for Rs. 30,000/- and Rs. 50,000/- both dated December 1997 were handed over also remains unexplained. It is also not disputed that the civil court has decreed the claim for money on the basis of the very same cheque and that the appeal preferred against the same has been dismissed. Even though there is a contention that second appeal has been preferred, there is nothing to show that there is any such appeal pending.

6. I am called upon to exercise the jurisdiction u/s 482 Cr.P.C. That is an extraordinary inherent jurisdiction. It ought to be invoked only rarely and in exceptional cases that too only in aid of justice. The law does not permit

challenge against interlocutory orders which inevitably lead to protraction of proceedings. This policy of the law is reflected clearly in Section 397(2) Cr.P.C which proscribes revisional challenge against interlocutory orders. Ordinarily and normally such challenge against interlocutory order must wait and must be raised along with the final order/judgment to be passed in the proceedings.

7. Of course, in an exceptional case, this Court has the jurisdictional competence to invoke the powers u/s 482 Cr.P.C to prevent abuse of process of court as also failure and miscarriage of justice. But is the instant one a case in which such jurisdiction ought to be invoked? This is the short question to be considered.

8. I shall scrupulously not advert to the rival contentions and their acceptability in detail. Suffice it to say that on perusing the entire materials available, I am not persuaded to agree that this is one such case where the inherent jurisdiction ought to be invoked in favour of the petitioner at this stage. The petitioner's option to challenge the impugned order also along with the final order, if necessary shall remain. I make it clear that I have not intended to express any opinion on merits about the acceptability of the contentions. I have only chosen to hold that the impugned order is not one which justifies or warrants the invocation of the extraordinary inherent jurisdiction.

9. In the result, this Criminal Miscellaneous Case is dismissed with the above observations. The learned Magistrate shall dispose of the complaint as expeditiously as possible at any rate, within a period of two months from the date on which a copy of this judgment is placed before the learned Magistrate.

10. Issue copy to the learned Counsel for the petitioner for production before the learned Magistrate.