(2010) 12 KL CK 0133

In the High Court Of Kerala

Case No : Writ Petition (C) No. 11818 of 2009

Davi APPELLANT

Vs

Inspecting Assistant Commissioner RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Money Lenders Act, 1958 — Section 12, 13, 14, 16, 16A

Citation : (2011) 1 KLT 803

Hon'ble Judges : P.S. Gopinathan, J

Bench : Single Bench

Advocate : P. Vijaya Bhanu and M. George Thomas, for the Appellant; P.R. Jayakrishnan, Government Pleader, for the Respondent

Judgement

P.S. Gopinathan, J.—On 3.8.2008, the second Respondent noticed that the writ Petitioner was conducting money lending without licence as contemplated under the Money Lenders Act. Accordingly, a case as Crime No. 820 of 2008 was registered. In the meanwhile, the writ Petitioner approached the first Respondent, the authorised officer to compound the offence u/s 18E of the Money Lenders Act with Ext.P1 application. Alleging that the first Respondent was not acting upon Ext.P1, the writ Petitioner moved this Court with W.P.(C) 3395 of 2009. By Ext.P2 judgment dated 2.2.2009, this Court directed the first Respondent to consider Ext.P1 application and pass orders as expeditiously as possible, at any rate, within four weeks from the date of production of a copy of that judgment. It was further ordered that in the meanwhile, further proceedings in Crime No. 820/2008 will stand deferred for six weeks from that date. Accordingly, in obedience to the direction of this Court in Ext.P2 judgment, the first Respondent considered Ext.P1 application and rejected the same by Ext.P3 order stating that the second Respondent had initiated action and in that circumstance, Ext.P1 petition is premature and intended to defeat the criminal case and the resultant actions thereon. It is seen that after investigation, the second Respondent filed Ext.P4 charge sheet before the Judicial Magistrate of

First Class, Kunnamkulam, a copy of which is produced as Ext.P4. Now this Writ Petition is filed seeking the following main relief''s:

i. Issue a writ in the nature of mandamus or any other appropriate writ, order or direction declaring the Exhibit P4, charge sheet is highly illegal.

ii. Issue a writ of certiorari or any other writ or direction and quash Exhibit P4, charge sheet in Crime No. 820/2008 filed before Judicial First Class Magistrate Court, Kunnamkulam.

iii. Issue a writ of mandamus or such other writ, orders or direction to the 1st Respondent to permit the Petitioner to composition of the offences claimed by the Petitioner as provided u/s 18 E of the Kerala Money Lenders Act, 1958, vide Exhibit P1.

2. The first Respondent filed a counter affidavit inter alia contending that the conduct of the writ Petitioner in doing money lending business without obtaining proper licence is punishable u/s 17 of the Money Lenders Act and is liable to be punished for a minimum period of three months and also for fine which may extend to Rs. 50,000/- and since minimum imprisonment for a period of three months is mandatory, the Writ Petition is liable to be dismissed.

3. Having heard the learned Counsel appearing for the writ Petitioner and the learned Government Pleader, I find that the offence u/s 17 of the Money Lenders Act is a cognizable offence and the second Respondent was correct in registering the crime and investigating the same and filing Ext.P4 charge report. The only contention that was advanced is that the conduct of doing money lending business without licence is compoundable u/s 18E of the Act and in the event Ext.P1 application is considered by the first Respondent in time, no offence u/s 17 could be made out. I find no merit in the submission made on behalf of the writ Petitioner. It is not disputed that carrying on business in money lending without proper licence u/s 3 of the Money Lenders Act is punishable u/s 17 of the Kerala Money Lenders Act. By virtue of Section 12, it is cognizable. Hence the Station House Officer can take cognizance and prosecute the offender. Section 18(C) would show that the licensing authority is also empowered to initiate departmental action and impose penalty. Having gone through Sections 12, 13, 14, 16, 16A, 16B, 17, 18, 18A, 18B, 18C, 18D, 18E and 20A, I find that prosecution contemplated under Sections 13, 17, 18A and 18B is independent of the power of the licensing authority appointed u/s 2(4A) to initiate departmental action or to compound the same. Therefore, once a cognizance is taken by a police officer for any of the offences mentioned earlier or a charge sheet is filed after investigation for offence under Sections 13, 17, 18A or 18B by the officer in charge of the police station, I find that it cannot be nullified by compounding the offence u/s 18E of the Money Lenders Act. If the offence is compoundable, a petition to that effect has to be filed before court. Probably, compounding by the licensing authority in respect of the departmental action may be a good reason for the offender to get a lenient sentence including exemption from the minimum

sentence prescribed u/s 17. But by the reason that the writ Petitioner had filed a petition for compounding, it cannot be held that the charge sheet filed by the investigating officer is illegal so as to entitle the offender to get a writ of declaration of this Court in exercise of the power vested under Article 226 of the Constitution of India or to quash the same in exercise of writ jurisdiction. However, I find that filing of the charge sheet is not at all a reason to reject an application filed by the offender before the licensing authority to compound the offence. Independent of the charge sheet the licensing authority is bound to accept the petition for compounding the offence. In the above circumstances, I find that the Petitioner is not entitled to get relief''s 1 and 2 sought for in the Writ Petition. Whereas he would succeed as regards prayer No. 3. Since the reason stated for rejecting the petition is not sustainable and since the prosecution is independent of the power of the licensing authority to take departmental action or to compound the offence u/s 18E, Ext.P3 order is set aside and the first Respondent is directed to consider Ext.P1 and pass appropriate orders. Taking note that the writ Petitioner has come forward acknowledging his default and sought for compounding the offence u/s 18E of the Money Lenders Act, the Magistrate shall consider the same at the time of awarding sentence. The first Respondent shall dispose of Ext.P1 at the earliest; but not later than two months from the date of receipt of a copy of this judgment. It is left open to the writ Petitioner to produce the order on Ext.P1 and to seek for lenient sentence before the criminal court in case the Petitioner pleads guilty or if found guilty after trial.

