

(1999) 12 KL CK 0043
In the High Court Of Kerala
Case No : C.R.M.C. No. 816 of 1999 (B)

G. Hari and Others

APPELLANT

Vs

John Promod Alexander and Another

RESPONDENT

Date of Decision : 04-12-1999

Acts Referred:

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

Citation : (2001) 1 CivCC 356 : (2000) CriLJ 1653 : (1999) 2 KLJ 1149

Hon'ble Judges : T.M. Hassan Pillai, J

Bench : Single Bench

Advocate : C.K. Abdul Rahim, for the Appellant; V. Eapen Mathai, Mathai and Eappen Vettath and A.G. Aneetha, Public Prosecutor, for the Respondent

Judgement

T.M. Hassan Pillai, J.—The complaint filed before the Judicial Ist Class Magistrate II Ernakulam accusing the petitioners of having committed the offence punishable u/s 138 of the Negotiable Instruments Act, 1881 (for short "the Act") is sought to be quashed by the petitioners invoking the powers of this Court u/s 482, Cr.P.C. on the sole ground that the complaint has been filed not within one month of arising of cause of action and question to be considered is whether there is ground to quash Annexure A1 complaint.

2. The allegation in the complaint filed against the petitioners by the first respondent is that 1st petitioner, who is accused No. 1, issued cheque No. 306521 dated 14-2-1996 drawn on the Federal Bank Ltd., North Parur Branch for Rs. 2,00,000/- in favour of the complainant/1st respondent and it is asserted that the cheque was given by accused No. 1 to cover the purchases made by 2nd petitioner who is her brother for Rs. 1,25,000/-, debt of Rs. 50,000/- owed by accused No. 3, (3rd petitioner who is the son of first petitioner) and also towards Rs. 25,000/- given by the complainant to accused No. 1. First respondent also alleged in the complaint that the cheque when presented for encashment was dishonoured by the drawee bank with the remarks "payment stopped by the

drawer" and the information that cheque was returned unpaid was received by the 1st respondent on 18-3-1996. Further assertion made in the complaint is that on 28-3-1996 demanding the amount covered by the dishonoured cheque he issued statutory notice envisaged in Section 138 of the N.I. Act to the first petitioner and that registered notice was received by the first petitioner on 29-3-1996. It is not the case of the first petitioner that within 15 days of receipt of that notice first petitioner or other petitioners paid the amount covered by the dishonoured cheque. In the complaint itself it is alleged that the cause of action arose after 15 days of receipt of the demand notice on 30-3-1996.

3. Admittedly, the complaint was filed on 3rd June, 1997 and it is thus clear from the averments in the complaint itself that it was not filed within one month of arising of cause of action. Learned Magistrate should not have taken cognizance of the offence and issued process to petitioners. Learned Magistrate also overlooked the fact while taking cognizance of the offence that judicial process should not be an instrument of oppression or needless harassment. The responsibility and duty of Magistrate is to find whether the accused persons are legally responsible for the offence charged for. Process should be issued only on satisfying that law casts liability or creates offence against the juristic person or the persons impleaded. At that stage the Court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of private person as vendetta to harass the persons needlessly, Learned Magistrate should not ignore the well settled legal position that vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means of wreak personal vengeance.

4. Ex facie it can be concluded with least hesitation that learned Magistrate has not applied his mind and if there was application of mind he would not have taken cognizance of the offence. While taking cognizance of offence against petitioners 2 and 3 the learned Magistrate conveniently ignored the fact that the dishonoured cheque was issued by 1st petitioner. It is clear that allegations in the complaint do not make out an offence u/s 138 of the Act and the complaint is not maintainable. To prevent abuse of the process of Court Annexure A1 is to be quashed invoking the powers of this Court u/s 482, Cr.P.C.

Hence, Annexure A1 complaint is quashed. Cr.M.C. is allowed.