(1998) 03 KL CK 0062

In the High Court Of Kerala

Case No : Criminal M.C. No. 2793 of 1996

Narayana Sharma APPELLANT

Vs

State RESPONDENT

Date of Decision : 16-03-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 195, 195(1), 195(1)(b)(2), 340
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120B, 34, 341, 379, 402

Citation : (1998) 1 KLJ 716 : (1999) 4 RCR(Criminal) 350

Hon'ble Judges : D. Sreedevi, J

Bench : Single Bench

Advocate : B. Swathi Kumar, for the Appellant; N. Santha) for State, for the Respondent

Judgement

D. Sreedevi, J.—This Crl.M.C. is directed against the order in C.C. No. 504 of 1996 pending in the Judicial First Class Magistrate''s Court, Thiruvananthapuram under Ss.120B, 405, 467, 420 and 341 of the Indian Penal Code. The above case arose out of a private complaint filed by one K.K. Salim, who is conducting a business in the name and style "Bismi Traders". He had borrowed Rs. 4,25,000/- from the petitioner and towards repayment issued a cheque, Annexure-A, drawn on S.B.T., Chalai Branch for the said sum. The cheque was presented for encashment, but was dishonoured by the Bank. Notice of dishonour was issued to the said Salim, but was returned with the endorsement "unclaimed". The petitioner then filed a complaint Annexure-C under Sec. 138 of the Negotiable Instruments Act.

2. The learned Magistrate took cognizance of the offence and issued summons to the accused and the case is pending as S.T.No.324 of 1995. But the respondent did not appear for a longtime. On 6-1-1996, he applied for exemption. On 18-3-1996 also he was absent.

3. While so, on 25-3-1996, K.K. Salim made a complaint alleging that on 10-7-1994 his driver by name Salim had taken away certain records and signed blank cheques kept by him in his business concern, on the allegation that his driver along with the petitioner had forged and cheated him. The Magistrate forwarded the same to the police under Sec.156(3) of the Code of Criminal Procedure for investigation. An FIR was registered at Poonthura Police Station under Secs. 379, 403, 402, 465, 467, 120B and 34 of the Indian Penal Code. The police after investigation laid the charge sheet. The petitioner seeks an order quashing the said proceedings.

4. The petition is opposed by the Public Prosecutor. Heard counsel on both sides.

5. The learned counsel for the petitioner submitted that the charge-sheet is unsustainable as it is hit by Sec.195(1)(b)(2) of the Code of Criminal Procedure. Sec.195(1)(b)(2) of the Code provides, that no court shall take cognizance of any offence described in Sec.463 or punishable under Ss.471, 475 and 476 of the said Code. When such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court, except on the complaint of that court or of some other court, to which that court is subordinate. The cheque was produced in court on 9-11-1994 along with the complaint. The complaint Annexure-D was filed 16 months after filing Annexure-C complaint. If actually the respondent had lost the cheque, he would have immediately intimated the Bank about the loss of the cheque. To prove this, there is no evidence. Even when the summons was received by him from the court, he had no case that the cheque was taken away by his driver. He waited for 16 months and knowing that the petitioner has filed a complaint under Sec. 138 of the Negotiable Instruments Act, he has filed the complaint. Section 195 of the Code of Criminal Procedure bars such complaints. The very purpose of section 195(1) of the Code is to control criminal prosecution on frivolous, vexatious or insufficient grounds inspired by a revengeful desire to harass or to spite the opponents. The object thereby is to protect persons from needless harassment of prosecution for vendeta to preserve unity of judicial process of insizzled administration of justice. Public justice demands absolute bars of private prosecution, and that power is given to the court to lay complaint under Sec.340 of the Code as per the procedure prescribed therein. Thus, section 195 of the Code provides a bar on filing of complaint while Sec.340 provides for removal of the bar by conferring jurisdiction on the court to file complaints. Since the cheque is produced in evidence in court, 16 months prior to the present Annexure-D complaint, the complaint, which is challenged in this petition, is not maintainable in law. The allegation contained in Annexure-D is not at all sufficient to attract the offences charged with. Annexure-D complaint is really an abuse of the process of court.

In the result, the proceedings under challenge Annexure-D are hereby quashed. The Criminal Miscellaneous Case is allowed as above.

