(2011) 06 KL CK 0114

In the High Court Of Kerala

Case No : Criminal M.C. No. 1575 of 2011

Ummoliparambil Ravi — APPELLANT

Vs

State of Kerala and Asokan — RESPONDENT

Date of Decision : 01-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 34, 406, 420, 465, 467

Citation : (2011) 06 KL CK 0114

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : T.B. Mini, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

Thomas P. Joseph, J.—Petitioner is second accused in Crime No. 242 of 2008 of Kasaba Police Station, Kozhikode and C.C. No. 400 of 2009 of the Court of learned Chief Judicial Magistrate, Kozhikode for offences punishable under Sections 406, 420, 465, 467 and 471 r/w Section 34 of the Indian Penal Code (for short, "the IPC"). Petitioner request to quash proceeding against him on the ground that there is no offence made against him even as per the averment in the complaint and the materials produced by the investigating officer. I have heard learned Counsel for petitioner and the learned Public Prosecutor.

2. The case arises from a cheque allegedly issued by the first accused in favour of the second respondent for alleged discharge of a debt. On dishonour of that cheque, second respondent filed S.T. No. 1909 of 2006 before the learned Magistrate, Kozhikode against the third respondent/first accused for offence punishable u/s 138 of the Negotiable Instruments Act and in the course of trial, on second respondent learning that third respondent had cheated him by issuing cheque on an account maintained by the petitioner, that case was withdrawn. Second respondent filed a private complaint before the learned Magistrate which

was forwarded to the police for investigation. That resulted in registration of Crime No. 242 of 2008. In that complaint petitioner was arrayed as second accused and the police after investigation submitted final report against petitioner and the third respondent. It is contended that the allegations are not sufficient to implicate petitioner for offence punishable u/s 420 of the IPC.

3. Annexure-A1 is the complaint preferred by second respondent before the learned Magistrate. I have gone through the complaint and find that there are specific allegations concerning petitioner also. The case is that in furtherance of their common intention of petitioner and the third respondent to cheat the second respondent, third respondent signed the cheque on the account maintained by petitioner. It is also alleged that petitioner handed over the cheque leaf to the third respondent, the latter signed and gave it to the second respondent. Question whether those allegations are correct or not, how else the cheque leaf of petitioner came into the hands of third respondent are all matters which the trial court has to decide. This Court cannot in exercise of the power u/s 482 of the Code of Criminal Procedure decide that question either way and say whether an offence is made out or not. Question is only whether on the allegations on record, charge against petitioner would prima facie stand. Having regard to the allegations made in Annexure-I, complaint and the final report, the contention that proceeding against petitioner has to be quashed cannot be sustained.

Without prejudice to the right of petitioner to raise appropriate contentions before the learned Magistrate, this criminal miscellaneous case is dismissed.