

## Brahmachari Prakash Vs A T Raghunath

**Court:** High Court Of Kerala

**Date of Decision:** Jan. 14, 2025

**Acts Referred:** Constitution of India, 1950 Article 226

**Hon'ble Judges:** A. Muhamed Mustaque, J; P. Krishna Kumar, J

**Bench:** Division Bench

**Advocate:** Laya Mary Joseph, Shyam Padman, C.M.Andrews, Bobby M.Sekhar, Ashwathi Shyam, Swathy Sudhir, Ram Mohan, Dinesh R.Shenoy, Sreelal Warriar

**Final Decision:** Allowed

### Judgement

P. Krishna Kumar, J

1. The first respondent, the writ petitioner, had a loan transaction with the Syndicate Bank, Angamaly branch, for Rs.123 lakhs. When the loan was

declared as NPA, he attempted to sell the secured asset to the appellant to settle the dues. As part of a settlement between the bank and the first

respondent, the appellant, a representative of Matha Amritanandamayi Math, deposited Demand Drafts for Rs.135 lakhs in the bank in the name of

the 1st respondent's business establishment. Later, the appellant withdrew the Demand Drafts from the bank, claiming that the agreement

between the appellant and the first respondent for purchasing the secured asset had not materialised. Later, when the bank brought the secured asset

in public auction, the appellant bought it for Rs.165 lakhs on behalf of the Math.

2. Alleging that the bank officials permitted the appellant to get back the Demand Drafts deposited in the bank in the name of the first respondent as a

result of a criminal conspiracy to give undue advantage to the Math and that there was flagrant corruption in permitting the said act which resulted in

auctioning the land to the 3rd respondent for a meagre amount, whereas, as per the agreement for sale between them, he would have been liable to

pay at least Rs.2.5 crores, the first respondent submitted Ext.P17 complaint to the Central Bureau of Investigation (CBI). Later, he preferred the writ

petition for directing the CBI to register a crime and to continue the investigation as per Ext.P17 complaint.

3. The Single Bench of this Court found that permitting the appellant to withdraw the demand drafts was extremely suspicious and unheard of in

banking history and accordingly ordered the CBI to register an FIR. It was also found that the case records furnished before the court in a sealed

cover by the CBI reveal sufficient materials for registering an FIR.

4. All the party respondents in the writ petition preferred separate writ appeals against the said finding on various grounds. For the sake of

convenience, we refer to W.A.No.1421/2016 in this judgment.

5. Heard the learned counsel appearing for the appellants and the learned Standing Counsel for the CBI. The learned counsel appearing for the first

respondent, the writ petitioner, submitted that he has no instruction in the matter. Though an opportunity was given to take specific instructions from

the first respondent, it served no purpose.

6. After carefully considering the case records and the impugned judgment, we are of the view that there is no reason to order a CBI investigation into

the said matter for any of the reasons mentioned in the impugned judgment. The Single Bench suspected foul play in the transaction primarily because

the bank returned the Demand Drafts for Rs.135 lakhs, purportedly based on Ext.R4(d) undated letter issued by the appellant, which the court did not

find credible. The Single Bench further observed that there is every reason to suspect that the letter is subsequently fabricated.

7. According to the appellant and the bank, the Demand Drafts were entrusted to the bank on 13/06/2011 as per Ext.R4(d), wherein it was stated that

“we request you to hold the amount under “No Lien Account” till we give you a confirmation for adjusting the amount with the loan account of

Ms.Sandeepani Smart Village. In case we do not reach an agreement with the party, you may please return the amount of 135 lacs on demand from

us”. The mere absence of a date on the letter does not, by itself, justify doubting its genuineness. Let us now examine whether there are any other

circumstances to doubt so.

8. As per Ext.R4(f) dated 14.06.2011, the bank acknowledged the receipt of Demand Drafts for Rs.135 lakhs from the appellant. It is stipulated in this

letter that the bank would return the amount if the appellant fails to reach an agreement with the first respondent. The appellant received back the

Demand Drafts from the bank on issuing Ext.R4(i) letter dated 25/06/2011. However, the Single Bench doubted the veracity of Ext.R4(i) by referring

to Ext.R4(h) letter issued by the appellant by registered post on 22/06/2011. The letter issued by registered post reads, “If you do not receive any

intimation from Mata Amritanandamayi Math regarding the settlement before the bank closing hours on 28/06/2011, you are hereby instructed to

return the sum of Rs.135 Lakhs in the form of DD payable to Mata Amritanandamayi Math on 29/06/2011 before 2 A.M.”. The Single Bench

opined that when such a letter was issued by registered post, it is highly suspicious that even before the time limit mentioned in the registered letter, i.e.

29/06/2011, the appellant had issued another letter [Ext.R4(i)] to the bank on 25/06/2011 and receive back the amount on the same day.

9. We are of the view that, in the given circumstances, when it is undisputed that the appellant issued such a registered letter, there is no reason to

suspect the subsequent letter i.e. Ext.R4(i). In substance, the undated letter [Ext.R4(d)], the registered letter and Ext.R4(i) letter complement each

other. In the registered letter, the appellant clearly specified that the bank might be required to return the amount covered by Demand Drafts if the

appellant and the first respondent did not reach a settlement before 29/6/2011. Through Ext.R4(i) letter, the appellant instructed the bank that the

settlement failed and that the amount should be returned immediately (without waiting till 29/6/2011). An unbiased analysis of Exts. R4(d) and R4(i)

reveals no incongruities compared to the registered letter [Ext.R4(h)]. These letters convey similar ideas but with different timelines. The first one

requests the banks to keep the Demand Drafts in a *charge-lien* account *charge-à,* expecting a settlement between the appellant and the 1st respondent. The

second one also refers to the expected settlement between them and it further instructs the bank to return the DDs if the settlement fails. The third

one says that the settlement failed, so the Demand Drafts should be returned. If it is viewed against this backdrop, everything appears to be justifiable.

Thus, we find no reason to suspect Exts. R4(d) and R4(i), as all matters mentioned therein conform to the contents of the registered letter, Ext. R(h).

10. The *Single Bench*, also *found*, that *the*, bank was not under any obligation to return the Demand Drafts produced by the appellant

in the absence of a written tripartite agreement. When we perused the records and pleadings, we found it difficult to accept the said observation as

well. It is evident from the records that there was a suit between the appellant and the first respondent as O.S.No. 402/2021 before the Principal

Subordinate Judge *charge-à,* Court, North Paravur in respect of the secured asset, and the relief sought in the suit was for the specific performance of the

agreement for sale of the secured asset. Admittedly, the appellant and the first respondent negotiated with the bank to release the secured asset

through a *charge-à,* one-time settlement *charge-à,*; presumably, the bank was also interested in clearing off the debt by receiving the amount offered by the

appellant. Ext.R4(f) is a letter issued by the bank in its letter head on 13.06.2011, acknowledging the conditions mentioned in Ext.R4(d). The Senior

Branch Manager of the bank clearly undertook in the said letter that the bank would keep the Demand Drafts for Rs.135 lakhs under a *charge-à,* lien

account and the amount would be adjusted to the loan account only on further instruction and the amount would be returned if the appellant and

the first respondent failed to arrive at an agreement. We find no reason to suspect the genuineness of this document, particularly in the light of

Ext.R4(h) registered letter.

11. If the bank was not obligated to return the DDs as observed by the Single Bench, the appellant was also not obligated to entrust the Demand

Drafts to the bank, as he had no connection whatsoever with the loan transaction between the first respondent and the bank. His interest was only to

get the secured asset from the first respondent free from encumbrance on specific terms. It is contended by the appellant that he withdrew from the

proposal to make payment to the bank when he found that the first respondent was not honouring the terms agreed upon between them concerning the

transfer of the land. Ordinarily, a third party will not indulge in any act of the said nature unless they benefit from the payment they make on behalf of

the debtor. Therefore, it is natural on their part to withdraw from their offer if the other side did not act as they expected. As a statutory entity and a

public sector enterprise, the bank was bound to act upon the terms on which the Demand Drafts were entrusted to it by a third party.

12. The Single Bench further observed that the property which was originally valued at Rs.4.5 crores was later undervalued at Rs.1.41 crore, with a

malafide intention to enable the appellant to bid it in auction for a lesser price. However, there is no material to find out whether the original valuation

done at the time of the initial loan transaction was accurate. At the same time, it remains undisputed that the sale price in the agreement for sale

executed by the 1st respondent in favour of the appellant was only Rs.2.5 crores. The auction in which the appellant purchased the secured asset was

a public auction and certain other persons also participated in it. Hence, the said finding is also untenable. The court further concluded that the 5th

respondent, the valuer, issued the valuation report for the said property without actually inspecting it, as he issued the report on the same day. We find

no material to sustain this opinion as well. It is interesting to note that when the one-time settlement was for Rs.135 lakhs, the secured asset was sold

in an auction for Rs.165 lakh. Thus, it is evident that there was no loss to the public exchequer because of the return of Demand Drafts.

14. It is settled law that issuing a direction under Article 226 of the Constitution of India for registering an FIR by the CBI or other investigating

agency is warranted only in exceptional circumstances. The mere return of the Demand Drafts by the bank does not demand a CBI investigation,

especially when the secured asset was subsequently sold for a higher amount, causing no loss to the public exchequer.

15. None of the circumstances pointed out in the writ petition call for the interference of this court in the said matter. In view of the above discussion,

the impugned judgment is liable to be set aside.

As a result, the writ appeals are allowed, and the impugned judgment is set aside.