

Haneefa Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Jan. 16, 2025

Acts Referred: Code of Criminal Procedure, 1973 â€” Section 239

Indian Penal Code, 1860 â€” Section 420

Life Insurance Corporation Act, 1956 â€” Section 3

Industrial Finance Corporation Act, 1948 â€” Section 3

Kerala Money Lenders Act, 1958 â€” Section 2(7), 3, 3(1), 17

Kerala Prohibition of Charging Exorbitant Interest Act, 2012 â€” Section 9(a)

Hon'ble Judges: G.Girish, J

Bench: Single Bench

Advocate: R.Sunil Kumar, A.Salini Lal, Rasheed C.Nooranad, Anitha M.N., G. Sudheer

Final Decision: Dismissed

Judgement

G.Girish, J

1. The petitioner is the accused in C.C.No.396/2016 on the files of the Judicial First Class Magistrate Court-II, Mavelikkara, a case relating to the

commission of offence under Section 420 of the Indian Penal Code, 1860, Section 3 read with Section 17 of the Kerala Money-Lenders Act, 1958,

and Section 9 (a) of the Kerala Prohibition of Charging Exorbitant Interest Act, 2012. He seeks to quash the proceedings in the said case stating the

reason that the offence alleged are not attracted in the facts and circumstances of the case.

2. The prosecution case is that the petitioner, who was having no licence or other authority for money lending, advanced a loan of Rs.3,00,000/- to the

second respondent for exorbitant interest after procuring four signed blank cheque leaves, a signed blank paper affixed with revenue stamp and the

land tax receipt of the immovable property of the second respondent, and gained unjust enrichment by encashing an amount of Rs.4,00,000/- by

misusing one of the signed blank cheques obtained from the second respondent, even after the repayment of an amount of Rs.1,50,000/- out of the

principal amount.

3. The case has been registered by the Sub Inspector of Police, Nooranadu, on the basis of the First Information Statement given by the second

respondent. During the course of investigation, the SI of Police, Nooranadu, recovered the cheque leaf allegedly misused by the petitioner for drawing

the amount of Rs.4,00,000/- from the account of the second respondent. The necessary bank statements showing the transaction in the above regard

were also collected by the Investigating Officer and produced before the Magistrate. After the completion of the investigation, a final report has been

laid in respect of the commission of the above said crime by the petitioner.

4. The petitioner, on appearance before the learned Magistrate, filed C.M.P.No.5935/ 2017 seeking discharge under Section 239 of the Code of

Criminal Procedure, 1973 (in short, Cr.P.C.). The learned Magistrate, after taking into account the prosecution records including the

statements of the witnesses, found that a prima facie case has been made out against the petitioner and hence the prayer for discharge cannot be

allowed. With the above observation, C.M.P.No.5935/ 2017 was dismissed by the learned Magistrate.

5. Heard the learned counsel for the petitioner, the learned counsel for the second respondent and the learned Public Prosecutor representing the State

of Kerala.

6. In the present petition, the contention of the petitioner is that the act of lending an amount of Rs.4,00,000/- to the second respondent and the

collection of money from the account of the second respondent making use of the cheque given by the second respondent will not constitute any

offence. The dictum laid down by a Single Bench of this Court in Kurian v. Leelamma Sebastian [2015(4) KLT 476] is relied on by the learned

counsel for the petitioner in support of the above argument.

7. It is true that in Kurian v. Leelamma Sebastian (supra), the learned Single Judge held that in a case where the accused is not shown to be a

money lender, the causal instances of money lending will not attract a prosecution under the Kerala Money-Lenders Act, 1958. However, the facts

and circumstances of the present case are totally different from the facts of the said case.

8. Section 2(7) of the Kerala Money-Lenders Act, 1958 defines "money lender" as follows:

"money lender" means a person whose main or subsidiary occupation is the business of advancing and realising loans or acceptance of deposits in the

course of such business and includes any person appointed by him to be in charge of a branch office or branch offices or a liaison office or any other office by

whatever name called, of his principal place of business and a pawn broker, but does not include

(a) a bank or a co-operative society; or

(b) the Life insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (Central Act 31 of 1956); or

(bb) the industrial Credit and Investment Corporation of India Limited incorporated under the Indian Companies Act, 1913 (7 of 1913);] or

(c) the Industrial Finance Corporation established under section 3 of the Industrial Finance Corporation Act, 1948 (Central Act 15 of 1948); or

[(d) x x x]

(e) the State Financial Corporation established under section 3 of the State Financial Corporation Act, 1951 (Central Act 63 of 1951); or

(f) any institution established by or under an Act of Parliament or the Legislature of a State, which grants any loan or advance in pursuance of the provisions of that

Act, or

(g) any institution in the public sector, whether incorporated or not exempted by the Government by notification.

Explanation I.â€• Where a person, who carries on in the State of Kerala the Business of advancing and realising loans is resident outside the State, the agent of such

person resident in the State shall be deemed to be the money lender in respect of that business for the purposes of this Act.

Explanation II.â€• For the purposes of this Clause (7A), proviso to sub-section (1) of section 3, clause (a) of sub-section (3) of section 10, [section 16B] and section 17,

the word 'person' shall include 'a firm or a joint family';

9. The statement given by the second respondent as well as the witnesses cited as CW2 and CW3 in the final report, contain clear indications that the

petitioner is a person involved in the business of advancing and realising loans. Thus, the Investigating Agency is seen to have gathered prima facie

materials to show that the petitioner is a money lender.

10. Section 3(1) of the Kerala Money-Lenders Act, 1958, stipulates that no person shall carry on the business as a money lender without a licence

obtained under the said Act. Section 17 of the said Act prescribes the punishment of imprisonment extending upto three years and fine of

Rs.5,00,000/- for the offenders who carries on money lending business without licence. So also, Section 3 read with Section 9(a) of the Kerala

Prohibition of Charging Exorbitant Interest Act, 2012, provides for a penalty of imprisonment for three years and fine of Rs.50,000/- for those who

charge exorbitant interest on any loan advanced by him.

11. A reading of the final report and the other relevant records relied on by the prosecution would prima facie show that there is a sustainable

complaint that the petitioner had committed the aforesaid offences alleged against him. The truth and falsity of the accusations in the above regard are

to be tested in the trial before the learned Magistrate. As the records relied on by the prosecution ex facie point to the commission of the offence

alleged against the petitioner, it is not possible for this Court to invoke the inherent powers under Section 482 Cr.P.C. to nip the prosecution in the bud,

and to terminate the proceedings before the learned Magistrate. Therefore, the petition filed by the petitioner herein is legally unsustainable.

In the result, the petition is hereby dismissed.