
(2005) 08 KL CK 0040

High Court Of Kerala

Case No: Criminal M.C. No. 2069 of 2003

Rajan

APPELLANT

Vs

Little House Marketing
Pvt. Ltd.

RESPONDENT

Date of Decision: Aug. 12, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173(8), 432, 482
- Negotiable Instruments Act, 1881 (NI) - Section 138
- Penal Code, 1860 (IPC) - Section 120B, 34, 406, 420, 465

Citation: (2005) 4 ILR (Ker) 39 : (2005) 4 KLT 595

Hon'ble Judges: R. Basant, J

Bench: Single Bench

Advocate: K. Ramakumar, for the Appellant; M.K. Damodaran, P. Sanjay, A. Parvathi Menon, Sojan Michael and Treasa Rani George, Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R. Basant, J.

The petitioner is the second accused in a prosecution initiated against him and the second respondent for the offences punishable under Sections 120B, 406, 420, 465 46H, 469 and 471 read with Section 34 IPC. The first respondent is the de facto complainant (Sic) in that case. Cognizance was taken on the basis of a final report submitted by the police against both the petitioner herein/second accused and the first accused/second respondent herein.

2. The acrimony between the parties has a long history. The petitioner filed a complaint u/s 138 of the Negotiable Instruments Act against three accused persons. The first accused is the Company, the first respondent herein. The second accused is the

Managing Director who represents the first respondent Company and the third accused is the second respondent herein. It was alleged that a cheque for Rs. 10 lakhs issued by the first respondent company and duly signed by its Managing Director (the second respondent herein) for the due discharge of a legally enforceable debt/liability was dishonoured by the drawee bank on the ground of insufficiency of funds. After observing the time table prescribed under the statute scrupulously Annexure A complaint was filed by the petitioner herein on 8.9.1999.

3. Even before Annexure A complaint was filed and cognizance was taken, without the knowledge of the petitioner herein, after receipt of the notice of demand, Annexure D complaint was filed by the first respondent before the police. Investigation was conducted on the basis of Annexure D and a negative final report was filed by the police. Aggrieved by the said negative final report, the Managing Director of the first respondent filed Annexure B protest complaint before the learned Magistrate. He also filed Annexure-C petition to direct further investigation u/s 173(8) Cr.P.C. The learned Magistrate directed further investigation as prayed for in Annexure-C petition. After conducting further investigation, police filed a fresh final report/charge sheet (Annexure E) on the basis of which cognizance has been taken against the petitioner herein and the second respondent for the offences enumerated above.

4. The crux of the charge against the petitioner and the second accused is that they have conspired together to commit the offences referred in the charge sheet. These offences were allegedly committed in respect of the cheque which is the subject matter of Annexure A private complaint filed by the petitioner. It was admitted that the Managing Director of the first respondent and the second respondent who was also one of the Directors of the first respondent had affixed their signatures in the cheque. But the contention was raised that the Managing Director had signed a blank cheque and had handed over the same to the second respondent. The second respondent had conspired with the petitioner and had forged the said blank cheque to make it appear that it was a cheque issued by the first respondent and duly signed by the Managing Director and the second respondent for the discharge of a liability. The said cheque was misused and Annexure A complaint was filed.

5. These in short are the rival contentions. Annexure A complaint u/s 138 of the Negotiable Instruments Act ended in acquittal. An appeal preferred against a Judgment of acquittal was also pending before this Court.

6. After the filing of this CrI.M.C. parties have settled all their disputes amicably and the de facto complainant/the first respondent and its Managing Director have no surviving grievance against the petitioner as also the second respondent. It was prayed that proceedings initiated on the basis of the final report Annexure E, may, in these circumstances, be quashed.

7. The learned Counsel for the petitioner contends that in view of the amicable settlement of the disputes between the parties which is reported to this Court in CrI.M.A. 98 85/2005, all further proceedings initiated on the basis of Annexure E may be quashed. All the party respondents also support the said request and repeat the same prayer. The learned Prosecutor only submits that appropriate orders may be passed.

8. The learned Counsel for the contestants rely on the decision in [B.S. Joshi and Others Vs. State of Haryana and Another](#), as also the decision in [Ettoop Vs. Kunhikannan](#), to contend that in view of the settlement and composition, notwithstanding the fact that all offences other than Section 420 IPC alleged in Annexure E final report are non-compoundable, proceedings may be quashed accepting the composition. The interests of justice demand such a course and the powers u/s 482 Cr.P.C. which have been described to be awesome in nature may be invoked to serve the ends of justice which ultimately is the primary and the paramount consideration u/s 432 Cr.P.C.

9.1 must, at the outset, state that this argument does not at all appeal to me. The dictum in B.S. Joshy v. State of Haryana or in Ittoop v. Kunhikannan cannot lead a court to the perverse conclusion that distinction between compoundable and noncompoundable offences is obliterated now and every request for composition of noncompoundable offences can straight-away be accepted by this Court while exercising powers u/s 482 Cr.P.C. That according to me is not the law at all. The law zealously recognises the distinction between compoundable and non compoundable offences. One has to look at the fundamentals. Criminal offences are at least fictionally, assumed to be not merely offences against personally aggrieved persons. Crimes are offences against the Society at large. The mere fact that private individuals are willing to compound the offences will not persuade the courts to discontinue the proceedings initiated on the basis of the complaints emanating from such victims. It is true that in B.S. Joshy and Ittoop, courts have chosen to quash proceedings when report of such composition is made. But that is done, not merely because the parties have compounded the offences but because the courts perceived that in the interests of justice, powers u/s 482 Cr.P.C. deserve to be invoked in those cases. Composition by aggrieved individuals is not the be all and end all while considering invocation of powers u/s 482 Cr.P.C. The distinction between compoundable and non-compoundable offences does very much exist even when invocation of powers u/s 482 Cr.P.C. to quash criminal proceedings are requested. The primary and paramount consideration is and can only be whether the interests of justice demand the invocation of the powers

10. The reported composition by itself cannot persuade this Court to invoke the powers u/s 482 Cr.P.C. The learned Counsel for the petitioner as also the counsel for the second respondent then contend that at any rate, proceedings initiated on the basis of Annexure E final report deserves to be quashed. It is contended that first of all Annexure E is only a counterblast against Annexure A complaint. It is launched without any bona fides. The learned Counsel for the petitioner points out that admittedly the Managing Director of the Company as also the second respondent herein had signed the cheque. The story

invented by the first respondent after a notice of demand u/s 138 of the Negotiable Instruments Act was issued by the petitioner and received by them was nothing but a transparent ploy to avoid the penal consequences u/s 138 of the Negotiable Instruments Act. The version advanced is inherently improbable and perversely unacceptable. The theory that the petitioner had conspired with the second respondent in order to facilitate initiation of a criminal complaint against the second respondent also is inherently riddled with improbabilities and cannot be swallowed by any prudent mind without a pinch of salt, submits the learned Counsel for the petitioner. Learned counsel for the petitioner further points out that the circumstances under which Annexure E final report had been filed cannot also be lost sight of. After initial investigation, a negative final report was filed and it was only after further investigation was directed u/s 173(8) Cr.P.C. that the present allegations have been raised.

11. It is not necessary for me to consider these contentions in any further detail in the light of the data furnished to the court along with Annexure E final report as the parties have settled their disputes and no one raises objections against the quashing of proceedings. A more detailed and exhaustive reference to highlight the inherent improbability or unacceptability of the nature of the allegations raised in Annexure-E does not appear to be necessary. Suffice it to say that I am convinced on the basis of the nature of the allegations raised in Annexure E final report, the sequence of events and the circumstances under which such allegations have been raised that this is an eminently fit case where the inherent powers u/s 482 Cr.P.C. deserve to be invoked in the interests of justice ignoring the composition which is entered into by the parties. The petitioner is entitled to succeed not merely because there has been composition but because the allegations in Annexure E and the circumstances under which such allegations are raised do not inspire confidence and persuade the court to agree that the proceedings deserves to be prematurely terminated without subjecting the parties to endure the trauma of continued prosecution. I am further satisfied that though the second respondent has not appeared before this Court as a petitioner and has only supported the petitioner's prayer for quashing, all the proceedings initiated on the basis of Annexure E can be quashed.

11. In the result, this petition is allowed. All further proceedings initiated on the basis of Annexure E final report - C.C.297/2003 pending before the Judicial First Class Magistrate II, Ernakulam is hereby quashed.