

(2010) 09 KL CK 0272

High Court Of Kerala

Case No: Criminal M.C. No. 1429 of 2007

Sumam Dominic

APPELLANT

Vs

Baby Mathew and State of Kerala

RESPONDENT

Date of Decision: Sept. 27, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Negotiable Instruments Act, 1881 (NI) - Section 138

Hon'ble Judges: Sasidharan Nambiar, J**Bench:** Single Bench**Advocate:** S. Rajeev, for the Appellant; Public Prosecutor, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

M. Sasidharan Nambiar, J.

Petitioner, the accused in C.C. No. 534/2005 on the file of Judicial First Class Magistrate's Court, Erattupetta, taken cognizance for the offence u/s 138 of Negotiable Instruments Act, on a complaint filed by the first respondent, filed C.M.P. No. 1900/2007 to send Exhibit P1 cheque to an expert to ascertain its age as well as the age of the signature and the writing therein contending that Exhibit P1 cheque was not issued by the petitioner and though first respondent, as PW1, deposed that petitioner borrowed that amount and issued Exhibit P1 cheque at the house of the first respondent on 9.5.2005, petitioner had not gone there and issued the cheque and during 2000-01, husband of the petitioner had borrowed amount from the first respondent and at that time, without the knowledge of the petitioner, he had given a signed blank cheque of the petitioner to the first respondent and that cheque was made use of to create Exhibit P1 cheque and if the cheque is examined by an expert, it would reveal whether the cheque was issued in 2005 as contended by the first respondent or during 2000-01 as claimed by the petitioner and therefore, the cheque is to be sent to an expert.

2. Learned Magistrate, by Annexure-II order dated 12.4.2007, dismissed the petition holding that Exhibit P1 cheque is a type written one and hence, it is not possible to compare the difference in its age from the signature and therefore, it is not necessary to send the cheque to the expert and the attempt is only to protract the proceedings. Petitioner filed this petition u/s 482 of Code of Criminal Procedure to quash Annexure-II order and to send the cheque to an expert as sought for.

3. This petition was admitted and an order of stay of further proceedings was granted, which is continuing from 4.5.2007 onwards.

4. Learned Counsel appearing for the petitioner and first respondent were heard.

5. If allowing the application would prejudice the first respondent on the ground that it will delay in taking a final decision, as an order of stay was granted by this Court, it has been pending before the Magistrate for more period than it would have, if the cheque was sent to an expert and a report was obtained. In such circumstances, after granting an order of stay and protracting the proceedings for all these years, it is not justifiable for this Court to deny the opportunity sought for by the petitioner.

6. It is for the accused to decide how his case is to be proved. It cannot be dictated either by the complainant or by the court. It is the case of the petitioner that if the dishonoured cheque is examined by an expert, the expert would be in a position to report whether the cheque was issued in 2005 as contended by the first respondent or during 2000-01 as claimed by the petitioner. I find that it is not in the interest of justice to deny opportunity to the petitioner to prove her case by letting in sufficient evidence, which, according to the petitioner, would establish her case.

7. In such circumstances, Annexure-II order is quashed. Judicial First Class Magistrate, Erattupetta is directed to send Exhibit P1 dishonoured cheque to an expert as sought for by the petitioner in C.M.P. No. 1900/2007, on the petitioner depositing sufficient amount before the learned Magistrate. Petitioner and first respondent are directed to appear before the learned Magistrate on 18.10.2010. Learned Magistrate to direct the amount to be deposited by the petitioner as expenses. Petitioner shall deposit the amount within ten days from the date of receipt of a copy of this order. On such deposit, Exhibit P1 cheque shall be send to the expert immediately with a direction to send the report expeditiously.

Petition is disposed.