

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

FRIDAY, THE 13TH DAY OF MARCH 2020 / 23RD PHALGUNA, 1941

Cr1.MC.No.1310 OF 2019(C)

AGAINST THE ORDER IN CC 953/2017 OF THE JUDICIAL FIRST CLASS
MAGISTRATE COURT (N.I ACT CASES), ERNAKULAM.

PETITIONER/PETITIONER/ACCUSED:

SANDHYA RANI.G
AGED 44 YEARS
D/O.AMMUKUTTY AMMA, SANTHOSH BHAVAN, DEVI LANE,
VELLAYANI, NEMOM P.O., THIRUVANANTHAPURAM - 695 020.

BY ADVS.
SRI.T.I.UNNIRAJA
SRI.S.G.SREEKANTH

RESPONDENT/CO.PETITIONER/COMPLAINANT & STATE:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.
- 2 M/S.XOTO CERAMICS PVT.LTD.
144, SHAKTHI CHAMBERS-2, 8-A, NATIONAL HIGHWAY, MORBI
- 363642, GUJRAT, REPRESENTED BY ITS DIRECTOR,
MR.AMITH KUMAR SAH.

R2 BY ADV. SRI.SUNIL SHANKER
R1 BY SRI RAMESH CHAND-PP

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
10.03.2020, THE COURT ON 13.03.2020 PASSED THE FOLLOWING:

R. NARAYANA PISHARADI, J

Cr1.M.C.No.1310 of 2019

Dated this the 13th day of March, 2020

ORDER

The petitioner is the accused in the case C.C No. 953/2017 on the file of the Court of the Judicial First Class Magistrate (N.I Act Cases), Ernakulam.

2. The aforesaid case is instituted upon the complaint filed by the second respondent against the petitioner for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

3. When the case reached the stage of defence evidence, the petitioner filed an application as Cr1.M.P No. 10420/2018 in the trial court for sending the cheque to the Forensic Science Laboratory, Thiruvananthapuram to obtain opinion regarding the handwriting of the entries in the cheque.

4. The second respondent filed objection to the aforesaid application contending that the intention of the petitioner was only to protract the case and to cause delay in the disposal of the case.

5. As per Annexure-A order, the learned Magistrate dismissed the application filed by the petitioner for sending the cheque for the

opinion of the expert. The legality and the propriety of the aforesaid order are challenged in this petition filed under Section 482 Cr.P.C.

6. Heard the learned counsel for the petitioner and also the first respondent.

7. The petitioner/accused has no case that the cheque involved in the case does not bear her signature. The dispute is only with regard to the other entries in the cheque.

8. Annexure-B is the copy of the deposition of the complainant in the case. It shows that, on cross-examination by the petitioner/accused, the complainant had given evidence as follows:

“Accused came to my place and gave the cheque. She was accompanied by a person, might be her husband or her employee. He wrote the entries in the cheque. Accused suggests that neither the accused nor her husband nor her agent wrote anything in Ext.P4 (Q) Incorrect (A).”

9. On a bare perusal of the aforesaid statement made by the complainant in the trial court it can be found that the complainant has got no case that the accused herself wrote the entries in the cheque.

10. The petitioner/accused has also no case that she had filled up the cheque in her own handwriting.

11. When, neither the complainant nor the accused, has got a plea that the accused herself made the entries in the cheque, it eludes comprehension why the cheque should be sent for obtaining an opinion of the expert with regard to the handwriting of the entries in it.

12. In **Bir Singh v. Mukesh Kumar: AIR 2019 SC 2446**, the Apex Court has held as follows:

"A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Section 20, Section 87 and Section 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would

attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt. In the absence of any finding that the cheque in question was not signed by the respondent- accused or not voluntarily made over to the payee and in the absence of any evidence with regard to the circumstances in which a blank signed cheque had been given to the appellant-complainant, it may reasonably be presumed that the cheque was filled in by the appellant-complainant being the payee in the presence of the respondent-accused being the drawer, at his request and/ or with his acquiescence. The subsequent filling in of an unfilled signed cheque is not an alteration".

13. When the accused admits the signature in the cheque, it is immaterial whether some other person had made the entries in the cheque or filled it up. Even if some other person had filled up the cheque, it does not in any way affect the validity of the cheque.

14. In the aforesaid circumstances, I find no illegality or impropriety in Annexure-A order passed by the learned Magistrate. The intention of the petitioner/accused was only to protract the proceedings in the case. The challenge made to Annexure-A order fails. The petition is liable to be dismissed.

15. It is a different matter whether the evidence of the complainant in the case can be believed or not. It is a matter to be decided by the trial court. The petitioner/accused is at liberty to raise all her contentions before the trial court.

Consequently, the petition is dismissed.

**Sd/-R. NARAYANA PISHARADI
JUDGE**

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APPENDIX

PETITIONER'S/S EXHIBITS:

- ANNEXURE A THE ORDER IN C.M.P.10420/2018 DTD.
03/11/2018 IN CC NO.953/2017.
- ANNEXURE B A TRUE COPY OF THE TESTIMONY OF THE 2ND
RESPONDENT 08/02/2018.
- ANNEXURE C A TRUE COPY OF THE WITNESS SCHEDULE DATED
16/07/2018.

RESPONDENTS EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE



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