

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

CRL.A.No. 620 of 2002 ()

AGAINST THE JUDGMENT IN ST 5054/1998 of J.M.F.C., IRINJALAKUDA

APPELLANT/COMPLAINANT:

M.S.SHUKUR, MANAKULANGARA PARAMBIL HOUSE,
KALLETUMKARA VILLAGE & DESOM, MUKUNDAPURAM TALUK.

BY ADVS.SRI.T.N.MANOJ
SRI.DINESH R.SHENOY

RESPONDENTS/ACCUSED:

1. SENSILVOS T.O., THEKKUMTALA HOUSE,
PAMBUMEKKAD ROAD, VADAMA P.O., MALA VIA.

2. STATE OF KERALA, REP.BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.M.H.HANIL KUMAR
R2 BY P.P.SRI. JIBU P. THOMAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. RAMAKRISHNAN, J.

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Crl.A.No.620 of 2002
.....

Dated this the 27th day of October, 2015.

JUDGMENT

The complainant in S.T.No.5054/1998 on the file of the Judicial First Class Magistrate Court, Irinjalakkuda is the appellant herein.

2. The case was taken on file on the basis of a private complaint filed by the complainant under section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act'). The case of the complainant in the complaint was that accused borrowed a sum of Rs.60,500/- and in discharge of that liability, he had issued Ext.P1 cheque, which when presented was dishonoured for the reason 'funds insufficient' as per Ext.P2 dishonour memo and the same was intimated to the complainant by Ext.P3 intimation letter. The complainant issued Ext.P4 notice vide Ext.P5 postal receipt intimating dishonour and demanding payment of the amount and the same was received by the accused evidenced by Ext.P8 postal acknowledgment. He had not paid the amount. So he committed the offence punishable under section 138 of the Act. Hence the compliant.

3. When the accused appeared before the court below, particulars of offence were read over and explained to him and he pleaded not guilty. In order to prove the case of the complainant, the complainant himself was examined as PW1 and Exts.P1 to P8 were marked on his side. After closure of the complainant's evidence, the accused was questioned under section 313 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') and he denied all the incriminating circumstances brought against him in the complainant's evidence. He had further stated that he had not committed any offence. On the basis of the evidence, court below came to the conclusion that there was no proof regarding execution of the cheque and also notice issued is not proper and acquitted the accused under section 255(1) of the Code. Aggrieved by the same, the above appeal has been preferred by the appellant along with Special Leave Petition, Crl.M.C.No.6654/2002 and leave was granted and appeal was admitted to file.

4. When the appeal came up for hearing today, counsel for the appellant submitted that complainant is no more and none is interested in prosecuting the appeal. Though there is no provision for abatement of appeal on the death of the appellant

if there is none to prosecute the appeal on the death of the complainant, the principle enunciated under section 256 of the Code can be extended as appeal is a continuation of the proceedings. On the death of the complainant, the order of acquittal passed by the court below has to be sustained, if he is not interested in prosecuting the appeal. So, this appeal is dismissed and order of acquittal passed by the court below is hereby confirmed.

Office is directed to communicate a copy of this judgment to the concerned court immediately.

Sd/-

K. RAMAKRISHNAN, JUDGE

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/true copy/

P.S to Judge

K. RAMAKRISHNAN, J.

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Crl.A.No.620 of 2002

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27th day of October, 2015.

JUDGMENT