

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

CRL.A.No. 673 of 2003 ()

CC 192/1999 OF JUDICIAL FIRST CLASS MAGISTRATE'S COURT-I, ERNAKULAM

Cr1.MC 1550/2003 OF HIGH COURT OF KERALA

APPELLANT:

M.J.JOSEPH, ROOM NO.216
MAS HOTEL ANNEX,
NORTH RAILWAY STATION ROAD,
KOCHI - 18

BY ADVS.SRI.T.U.ZIYAD
SRI.SUNIL V.MOHAMMED
SRI.P.P.JOYI

RESPONDENT:

JEEMON P.ABRAHAM
PROPRIETOR,
M.I.P. ELECTRONICS (ABISON ELECTRONICS)
MEDICAL TRUST BUILDING, PALLIMUKKU,
KOCHI - 16

R1 BY ADV. SRI.N.C.SAJITH
BY PUBLIC PROSECUTOR SHRI. JIBU P. THOMAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18-12-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SKV

K.RAMAKRISHNAN, J.

=====

Crl. Appeal No. 673 OF 2003

=====

Dated this the 18th day of December, 2015

JUDGMENT

The complainant in CC No.192/1999 on the file of the Judicial First Class Magistrate's Court-I, Ernakulam is the appellant herein. The above case was taken on file on the basis of a private complaint filed by the complainant against the respondent alleging offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the Act).

2. The case of the complainant in the complaint was that the accused borrowed a sum of Rs.50,000/- and in discharge of that liability, he had issued Exts.P1 cheque which when presented was dishonoured for the reason funds insufficient evidenced by Ext.P2 dishonour memo. The complainant issued Exts.P3 notice vide Ext.P5 postal receipt intimating the dishonour and demanding the payment of amount which was received by the accused evidenced by Ext.P4 postal acknowledgement. He had not paid the amount. So he had committed the offence punishable under Section 138 of the Act. Hence the complaint.

3. When the accused appeared before the court below,

the 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 P6 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 and he denied all the incriminating circumstances brought against him in the complainants evidence. He had further stated that he had borrowed only Rs.35,000/- and he had paid the amount. At the time when he borrowed, the amount a blank signed cheque was given and that has been misused and the present complaint has been filed. But no defence evidence was adduced on his side.

4. After considering his evidence on record, the court below found the accused not guilty and acquitted the accused under Section 255(1) of the Code of Criminal Procedure. Aggrieved by the same, the present appeal has been preferred by the appellant/complainant with special leave petition as Crl. M.C. 1550/2003, the application was allowed and leave was granted and appeal was admitted to file.

5. When the appeal came up for hearing on the earlier occasion, there was no appearance for the complainant. A report has been received from the court below that the records are missing and they are not able to trace out the records. There was no representation on behalf of the counsel for the complainant. So a notice has been issued to the complainant directly as they have to produce the copies of available documents so as to consider the question of reconstruction of missing records but it was returned with endorsement addressee left. So notice could not be served on the appellant so as to ascertain as to whether there is any possibility of reconstruction of records to proceed with the appeal. But going through the judgment, this Court felt that the case can be disposed of even without records.

6. Heard the Counsel for the respondent Shri.Ashok Kumar and learned Public Prosecutor Shri. Jibu P. Thomas.

7. The case of the complainant in the complaint was that the accused borrowed a sum of Rs.50,000/- and in discharge of that liability, he had issued the disputed cheque, But the case of the accused was that he had borrowed only Rs.35,000/- and the amount has been discharged and a blank

signed cheque was given as a security at that time time of borrowal which was misused as the complainant wanted exorbitant interest for which he was not prepared to pay. When the complainant was examined as PW1, he had deposed that the cheque was issued in respect of a transaction in which the accused had borrowed Rs.35,000/- and he had given evidence stating that the he borrowed Rs.35,000/- and he issued the cheque and notice was also issued for that purpose. But the court below found that his oral evidence did not tally with the documentary evidence produced and he is not able to explain the discrepancies happened in the documents produced and also the oral evidence adduced in respect of the transactions. So under the circumstances, court below came to the conclusion that the complainant had no consistent case and he had not proved the case alleged by him in the complaint and he has got a different case when he was examined before the court and as such it cannot be said that the complainant had established the case against the accused that the cheque in dispute was issued in respect of a transaction claimed by him in the complaint and that benefit was given to the accused and acquitted the accused on that

ground. This court also found on the basis of evidence adduced by the complainant as seen from the judgment, any other view could be possible and the deposition given by him contrary to the allegations made by the complainant cannot be set aright also by giving opportunity to the complainant to adduce further evidence if any required in this regard. So the view taken by the court below on the basis of evidence available cannot be said to perverse so as to interfere with the order of acquittal passed by the court below by the appellate court. So the appeal lacks merits and the same is liable to be dismissed.

In the result the appeal fails and the same is hereby dismissed confirming the order of acquittal passed by the court below.

Office is directed to communicate this order to the concerned court immediately.

Sd/–

K.RAMAKRISHNAN, JUDGE

SKV