

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

CRL.A.No. 861 of 2003 ()

AGAINST THE ORDER/JUDGMENT IN Cr1.MC 1483/2003 of HIGH COURT OF KERALA
DATED 21-02-2003

&

AGAINST THE JUDGMENT IN CC 157/1995 of J.M.F.C.-I,
TRIVANDRUM, DATED 14-08-1997

APPELLANT/LEGAL REPRESENTATIVE OF THE COMPLAINANT:

ANANDAVALLI, W/O.V.R.VISWAKUMAR,
ANGEETHA COLOUR PRINTERS,
KANNAMMOOLA, THIRUVANANTHAPURAM.

BY ADVS.SRI.B.KRISHNA MANI
SRI.V.PREMCHAND

RESPONDENT/ACCUSED / STATE:

1. GIREESH KUMAR, PROPRIETOR,
NEOGRAPHICS, ALL SAINTS COLLEGE JUNCTION,
TRIVANDRUM.
2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV.SRI.SUMAN CHAKRAVARTHY
R2 BY PUBLIC PROSECUTOR SRI.JIBU P. THOMAS

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 12-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. RAMAKRISHNAN, J.

.....
Crl. Appeal No.861 of 2003

.....
Dated this the 12th day of October, 2015

J U D G M E N T

Legal representative of the complainant in C.C.No.157/1995 on the file of the Judicial First Class Magistrate Court-V, Thiruvananthapuram, is the appellant herein. The case was taken on file on the basis of the complaint filed by the predecessor of the appellant, namely Gireesh Kumar, as proprietor, Neo Graphics, All Saints College Junction, Thiruvananthapuram under Section 138 of the Negotiable Instruments Act (hereinafter called the Act).

2. The case of the complainant in the complaint was that, in discharge of an amount of ₹17,500/- due from the accused to the complainant, the accused issued a cheque for the said amount drawn on Kulathoor branch of District Co-operative Bank Thiruvananthapuram, in favour of the complainant which when presented was dishonoured

for the reason 'payment stopped by the drawer'. In spite of notice issued, he did not pay the amount. So he had committed the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter called the Act). Hence the complaint.

3. After taking sworn statement of the complainant, the complaint was taken on the file of the Additional Chief Judicial Magistrate Court, Thiruvananthapuram, as S.T.No.247/1992 under Section 138 of the Negotiable Instruments Act. Subsequently the case was withdrawn and made over to Judicial First Class Magistrate Court-V, (Court for Mark List Cases), Thiruvananthapuram, by the orders of the Chief Judicial Magistrate, where it was re-numbered as C.C.No.157/1995. While so the accused filed C.M.P.No.759/1997 for dropping the proceedings on the ground that the notice issued is not proper relying on the decision reported in **Raj v. Rajan (1997(1) KLT 302)**, as the notice was issued not only claiming the cheque amount but also interest and cost and

thereby the notice is not proper and court below allowed the application and also acquitted the accused on that ground without taking evidence under Section 255(1) of the Code of Criminal Procedure. After that the original complainant died and the appeal was filed by the legal representative namely wife of the original complainant before this court with special leave petition as Crl.M.C.No.1483/2003 with delay condonation application. Delay was condoned and leave was granted and the appeal was admitted to file.

4. Heard Sri.B.Krishna Mani, counsel for the appellant and Sri.Suman Chakravarthy, counsel for the first respondent and Sri.Jibu P. Thomas, Public Prosecutor appearing for the State.

5. The counsel for the appellant submitted that, the court below was not justified in acquitting the accused on the ground that notice was issued claiming interest and cost also apart from the cheque amount and it cannot be said to be a proper notice. This was considered by the

Division Bench of this court in **Kunjan Panicker v. Christudas (1997 KHC 411)**, it has been held that, the notice issued claiming interest and cost will not invalidate the notice and that will be proper notice. The Division Bench has observed that, the view in Raj v. Rajan's case (supra) is not correct.

6. On the other hand, the counsel appearing for the first respondent submitted that, the court below was justified in relying on the decision and rightly acquitted the accused and the order does not call for any interference.

7. Heard the Public Prosecutor also.

8. It is an admitted fact that the husband of the appellant had filed the complaint under Section 138 of the Negotiable Instruments Act against the first respondent on the basis of a cheque said to have been given by him in discharge of a legally enforceable debt of ₹17,500/- due from him to the complainant. It is also in away admitted that the cheque when presented was dishonoured for the reasons 'payment stopped by the drawer' and in spite of notice

issued, the accused did not pay the amount. When the accused appeared before the court below on getting summons, he filed C.M.P.No.759/1997 stating that he is entitled to get acquittal as the complaint is not maintainable due to want of proper notice contemplated under Section 138 of the Negotiable Instruments Act, as in the notice apart from the cheque amount interest and cost also claimed, which is higher than the amount mentioned in the cheque. Court below relying on the decision **Raj v. Rajan (1997(1) KLT 302)** allowed the application and acquitted the accused under Section 255(1) of the Code of Criminal Procedure, which is being challenged by the appellant by filing this appeal.

9. The legality of the proposition laid down in the decision reported in **Raj v. Rajan (1997 (1) KLT 302)** was considered by the Division Bench of this court in **Kunjan Panicker v. Christudas (1997 KHC 411) = (1997 (2) KLT 539)** and held that, merely because interest and cost was also claimed along with cheque amount, it will

not make the notice invalid or defective and that cannot be a ground for acquittal of the accused. In that decision it has been observed that, if the amount claimed in the notice is severable, merely because interest and cost was also demanded on consequence of non-payment of the amount will not invalidate the notice and acquittal on that ground was not correct, this is the view taken by the Division Bench in that case. In this case also on going through the notice, it is seen that he has been asked to pay the above said amount namely cheque amount of ₹17,500/- with 12% interest per annum and ₹100/- towards notice charges. So it is clear from the notice that, what was claimed by the complainant in the notice was that the cheque amount of ₹17,500/- and apart from that in case of default to pay interest and cost and it is also mentioned that in case of default the complainant will be forced to proceed against the accused at his risk and cost. So in this case notice was issued demanding the cheque amount and also informing the consequences of non-payment within the time and he is

entitled to recover interest and cost also from him by initiating appropriate proceedings. In view of the dictum laid down in Kunjan Panicker's case (supra), the observation made by the court below that notice issued is not proper and consequential acquittal passed by the court below is unsustainable in law and the same is liable to be set aside. Since court did not go into the other aspects by allowing the parties to adduce other evidence, this court has no other option, but to remand the case to court below for fresh disposal in accordance with law.

So the appeal is allowed and the order of acquittal passed by the court below acquitting the accused allowing C.M.P.No.759/1997 is set aside and the order of acquittal passed by the court below on that ground is set aside, holding that the notice issued is proper and remitted the case to the court below for fresh disposal in accordance with law. Court below is directed to take the case on file and dispose of the case afresh after giving opportunity to the parties to adduce evidence in accordance with law.

Parties are directed to appear before the court below on 07.12.2015. Court below is directed to dispose of the case as expeditiously as possible, considering the fact that the original complaint was filed in the year 1992, at any rate within three months from the date of receipt of the judgment.

Office is directed to communicate this judgment to the concerned court, immediately and send back the records forthwith.

Sd/-
K. RAMAKRISHNAN, (Judge)

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P.A. to Judge