

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

CRL.A.No. 1284 of 2003 ()

AGAINST THE ORDER/JUDGMENT IN Cr1.L.P. 22/2003 of HIGH COURT OF KERALA
DATED 03-06-2003

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AGAINST THE JUDGMENT IN CC 68/2002 of J.M.F.C.IV (MOBILE),
THIRUVANANTHAPURAM, DATED 29-11-2002

APPELLANT/ COMPLAINANT(S) :

B.SURESHKUMAR, T.C.20/2801,
SREEDEVI NAGAR,
HOUSE NO.A.35,
KARAMANA P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.J.HARIKUMAR

RESPONDENT/ACCUSED(S) :

1. KULSAM BEEVI, EMPLOYED WITH LIFE INSURANCE CORPORATION, CBO NO.IV (CAREER AGENTS BRANCH), M.G. ROAD, THIRUVANANTHAPURAM, RESIDING AT ROADARIKATHU KADAYIL VEEDU, HOUSE NO.XVII/200, PATHAMKALLU, NEDUMANGADU P.O., THIRUVANANTHAPURAM.
2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

R1 BY ADVS.SRI.C.J.JOY

SRI.C.C.ABRAHAM

R2 BY PUBLIC PROSECUTOR SMT. SEENA RAMAKRISHNAN.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. RAMAKRISHNAN, J.

Crl. Appeal No.1284 of 2003

Dated this the 30th day of September, 2015

JUDGMENT

This is an appeal filed by the complainant in C.C.No.68/2002 on the file of the Judicial First Class Magistrate Court-IV, (Mobile), Thiruvananthapuram, against the order of acquittal passed by the court below in the matter. The case was taken on file on the basis of private complaint filed by the complainant under Section 138 of the Negotiable Instruments Act (hereinafter called 'the Act').

2. The case of the complainant in the complaint was that accused borrowed a sum of ₹30,000/- and in discharge of his liability, he issued Ext.P1 cheque, which when presented was dishonoured for the reasons 'funds insufficient' evidenced by Ext.P2 dishonour memo. Complainant issued Ext.P3 notice vide Ext.P4 postal receipt

intimating the dishonour and demanding payment of the amount which was received by the accused evidenced by Ext.P5 postal acknowledgment. Accused issued Ext.P6 reply notice stating that no amount is due under the cheque and he is not liable to pay any amount and the amount has already been discharged and the cheque was issued not for any amount due as claimed by the complainant, but for some other purpose which has been accomplished already and the cheque was not returned. Accused did not pay the amount. According to the complainant, the accused had committed the offence punishable under Section 138 of the Negotiable Instruments 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 P7 were marked on his side. After closure of the complainants 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 not borrowed ₹30,000/-, but he had borrowed only ₹5,000/- on two occasions through DW2 and as a security for the same two blank signed cheques were obtained and though the amount was paid the cheque was not returned, misusing the cheque the complaint was filed.

4. In order to prove the case of the accused, DWs 1 to 3 were examined and Exts.D1 to D6 were marked on his side. Exts.P8 and P9 were marked through DWs 2 and 3 on the side of the complainant during cross examination. After considering the evidence on record, the court below found that the complainant had failed to prove his case and the accused had rebutted the presumption and acquitted the accused under Section 255(1) of the Code of Criminal Procedure. Aggrieved by the same, the above

appeal has been preferred by the appellant /complainant before the court below along with Crl.L.P.No.22/2003, seeking leave to file appeal against acquittal and leave was granted and appeal admitted.

5. When the appeal came up for hearing today, the counsel for the respondent submitted that the respondent is no more. But the counsel for the appellant submitted that, he was not aware of the fact. However, since the accused is no more, in view of the provision under Section 394 of the Code of Criminal Procedure, an appeal filed against acquittal by the complainant, if the accused is no more, then the appeal will abate. Further I have gone through the evidence adduced in this case, in order to prove the case of the accused, he had examined as DWs 1 to 3 and Exts.D1 to D6 were marked on her side.

6. Though a reply was issued, the complainant had not mentioned anything about the transaction mentioned in the reply notice and he had not even

mentioned the date of borrowel and issuance of cheque, in spite of the fact that the accused had a specific case in her reply notice, the circumstances under which the cheuqe was issued. Only at the time of evidence, he had developed a case as to when the amount was paid and the cheque was issued etc. So under the circumstances, the court below had come to the conclusion that the case of the accused is more probable than that of the complainant and he had rebutted the presumption and the complainant had not discharged his burden of proving the case beyond reasonable doubt after the burden shifts on him.

So under the circumstances this court feels that, there is nothing to interfere in the matter, though this court on appreciation of evidence can came to a different finding, it cannot substitute this court's finding to convict the accused. It is settled law that if two views are possible and one view was in favour of the accused which also possible as found by the court below on the basis of evidence, then

the appellate court should be slow in reversing the order of acquittal. So under the circumstances the appeal lacks merits and the appeal is liable to be dismissed. So the appeal is dismissed as abated on the death of the accused.

Office is directed to communicate this judgment to the court below at the earliest.

Sd/-
K. Ramakrishnan, Judge

//True Copy//

P.A. to Judge

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