IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

CRL.A.No. 1950 of 2003 ( )

Crl.L.P. 543/2003 of HIGH COURT OF KERALA
ST 3495/2000 of JUDICIAL FIRST CLASS MAGISTRATE COURT, KODUNGALLUR

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APPELLANT/COMPLAINANT:

JAYARAJAN, S/O. KUMARAN
POLASSERY, CHAKKARAPADAM
KODUNGALLUR

BY ADVS.SRI.N.P.SAMUEL
SRI.RUPESH V.R.

RESPONDENTS/ACCUSED & STATE:

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1. NASEER, S/O. KADER, OLAKOTT
   PERINJANAM, KODUNGALLUR
   THRISSUR DISTRICT

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

R1 BY ADV. SRI.M.SHAJU PURUSHOTHAMAN
R1 BY ADV. SRI.K.S.RAJESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SD

P. UBAID, J.

Crl.Appeal No.1950 of 2003

Dated this the 2nd day of June, 2015

JUDGMENT

A judgment of acquittal passed by the learned Judicial First Class Magistrate-I, Kodungalloor in S.T.No.3495/2000 is under challenge. The complainant in the court below brought this appeal with the leave of this Court. The 1st respondent herein faced prosecution under Section 138 of the Negotiable Instruments Act on a complaint made by the appellant herein, that a cheque issued by the 1st respondent in his favour for Rs.25,000/- in discharge of the amount borrowed by him, was bounced due to insufficiency of funds, and in spite of statutory notice, the 1st respondent failed to make payment. The 1st respondent (accused) entered appearance in the trial court and pleaded not guilty when the substance of accusation was read over and explained by the learned Magistrate. The case accordingly proceeded for trial. The complainant examined himself and marked Exts.P1 to P6 to prove his case. When examined under Section 313 Cr.P.C., and also during the cross examination of the complainant, the accused maintained a definite defence that he had no dealings with the complainant personally, that he had not at any time borrowed any amount from the complainant, and that the cheque in question (the subject matter of prosecution) is in fact a cheque issued by him in a different transaction as security, when he borrowed an amount of Rs.15,000/- from one 'Sambanna Finance', a partnership firm, of which the complainant is a partner. In defence the accused examined himself as DW1 with permission under Section 315 Cr.P.C., and also proved exhibits D1 to D5 documents including the pass book showing his transactions with 'Sambanna Finance'. On an appreciation of the evidence, the learned Magistrate found that the case pleaded by the complainant is not true at all, that the case set up in defence by the accused is probable, and that the complainant has miserably failed to prove his case that Ext.P1 cheque is supported by consideration. Accordingly, the learned Magistrate acquitted the accused on 22.07.2003. Aggrieved by the judgment of acquittal, the complainant has come up in appeal.

2. The points for decision in this appeal are;

i) Whether the case of the complainant is true, that Ext.P1 cheque was issued by the accused in discharge of a legally enforceable debt.

ii) Whether the accused has succeeded in rebutting the presumption against him, and whether his case stands probabilised, that the cheque in question was in fact issued by him in another transaction with one 'Sambanna Finance'.

3. Of course, it is true that the complainant gave evidence as PW1 substantiating the allegations in the complaint. It is his definite case that an amount of Rs.25,000/- was borrowed by the accused from him in June, 1999. He explained the source, that for lending money to the accused he borrowed some amount from his friend, Yatheendradas, and some amount was taken from his personal savings also. It is really strange and unbelievable that for the purpose of lending money to the accused, the complainant borrowed some amount from somebody else. Any way, when the learned defence counsel put some questions in cross examination regarding 'Sambanna

Finance' and the alleged transaction between the accused and 'Sambanna Finance', the complainant pleaded ignorance on some aspects, and he even went to the extent of denying any relationship with 'Sampanna Finance'.

4. The accused gave evidence as DW1, probabilising his case that he had borrowed an amount of Rs.15,000/- from 'Sambanna Finance', and that the debt was partly discharged by him. Ext.P1 cheque, according to him, was issued by him in the said transaction as security, and it was given as blank cheque, containing only the signature. He also proved Exts.D1 and D2 pass books showing his transactions with 'Sambanna Finance'. The complainant is definite that he had no connection with the said 'Sambanna Finance'. It appears that his stand is that he does not know what the said firm is, or where the said firm is. But his case stands fully disproved by the Exts.D4 and D5 documents. Ext.D4 will show that 'Sambanna Finance' had a licence for finance business till 31.03.2001. Ext.D5 licence surrendered by the Managing Partner of 'Sambanna Finance' will show that the Managing Partner of 'Sambanna Finance' is none

other than the complainant herein. The complainant has no explanation for the Ext.D4 letter issued from the office of the Inspecting Assistant Commissioner of Commercial Taxes, or for the Ext.D5 licence in his name, and surrendered by him when 'Sambanna Finance' stopped the business.

5. As regards the facts alleged in the complaint, there is the evidence given by the complainant and as regards the defence pleaded by the accused, there is the contra evidence given by the accused as DW1. The question is, whose evidence is acceptable. In the above circumstances, where the complainant denied the whole truth regarding 'Sambanna Finance', of which he was Managing Partner, this Court is inclined to believe the evidence given by the accused in defence, that the Ext.P1 cheque in question was in fact issued by him to 'Sambanna Finance', when he borrowed an amount of Rs.15,000/-, and that he had no dealings with the complainant personally. I find that the case of the complainant is really suspicious as regards the consideration for the cheque in question. I further find that the court below rightly came to the finding, that the cheque in question is not

supported by consideration, and that the accused has in fact succeeded in proving his case in defence that the cheque in question issued by him in another transaction with 'Sambanna Finance'. I find that the case of the accused is really believable that he had no transaction personally with the complainant herein, and I find no reason for interference in the judgment of acquittal passed by the court below.

In the result, this appeal brought by the complainant is dismissed.

Sd/-

P. UBAID, JUDGE

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