

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

CRL.A.No. 149 of 2006 ()

AGAINST THE ORDER IN Cr.L.P. 743/2005 of HIGH COURT OF KERALA DATED 04-01-2006

AGAINST THE JUDGMENT IN ST 23/2000 of JUDICIAL FIRST CLASS MAGISTRATE COURT-I,
KOZHIKODE DATED 21.12.2004

APPELLANT/COMPLAINANT::

P. SREESAKUMAR,
PROPRIETOR, INDO SCALES, P.O. CHEMMAD
MALAPPURAM.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS/ACCUSED::

1. P.K. RAGHAVAN, S/O. MOOTHORAKUTTY,
ARADHA SCALES, PAZHAYANGADI, KONDOTTY.
2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R BY PUBLIC PROSECUTOR SMT.LILLY LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 08-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl.Appeal No.149 of 2006

Dated this the 8th day of December, 2015

JUDGMENT

Aggrieved by the order of acquittal of the accused in S.T.No.23 of 2000 by the Judicial First Class Magistrate Court-I, Kozhikode, the complainant comes up in appeal, after obtaining leave of this Court.

2. The short facts absolutely essential for the disposal of this appeal are as follows :

The complainant came forward with a case that, the accused had borrowed a sum of ₹50,000/- from him on 14.05.1996 and when the money was demanded back, he issued a cheque on 14.06.1999, which is marked as Ext.P2. The cheque was duly presented for encashment but, it was returned for insufficiency of funds. A statutory notice was issued. Since the amount remained unpaid, the complaint was laid.

3. The court before which the complaint was laid, took cognizance of the offence and after following the necessary procedures, issued summons to the accused. On appearance of the accused before the said court, copies of documents were delivered and particulars of the offence were read out to him, to which he pleaded not guilty. Complainant's evidence consists of the testimony of PWs.1 and 2 documents marked as Exts.P1 to P6.

4. After the close of complainant's evidence, the accused was

questioned under Section 313 Cr.P.C., wherein he denied all the incriminating circumstances pointed out to him and maintained that he is not liable. In defence, he examined DWs.1 to 5 and had Exts.D1 to D7 marked. Ext.C1 was marked as court exhibit.

5. After consideration of the materials, the court found two grounds against the complainant. The first ground was that, the date of cheque is 14.06.1999. Since the debt was incurred on 14.05.1996, it is barred by limitation. The second ground was that, the memo of dishonour is dated 02.07.1999 and going by the materials on record, the statutory notice was issued only on 23.07.1999. On these two findings in favour of the accused, he was acquitted.

6. The acquittal is challenged by the learned counsel for the appellant by pointing out that, as far as the first ground is concerned, it has no legal legs to stand as a debt can always be revived by a contract or issuance of a cheque for the amount. Even otherwise, according to the learned counsel, the finding that it is barred by limitation cannot be sustained. The learned counsel also drew the attention of this Court to the memo of dishonour which is dated 02.07.1999. It is rather inconceivable that, it should have been received by the complainant on the very same day. He attempted to prove the date of receipt of the memo. But he was

unable to do so for want of production of the relevant documents by PW2. The learned counsel pointed out that, reasonable time ought to have been taken by the court below to come to the conclusion that, the memo was served on the appellant of dishonour. Viewed from that angle, the acquittal is unfounded.

7. Though the first contention taken holds considerable force, the second contention lack merits. As far as the finding on debt as such is concerned, the court below may not be justified in holding that it is barred by limitation. A barred debt can also be a subject matter of contract and a new debt can be created thereby. The issuance of cheque amounts to such a transaction.

8. But it is difficult to accept the second contention raised by the learned counsel for the appellant. It was incumbent on the part of the complainant to prove the date of receipt of the memo. There cannot be any presumption in that regard. It is true that the complainant did examine PW2, the Manager of the Bank and also sought to summon the local delivery book, which was unavailable at the relevant point of time. But non-availability of such a register cannot be in favour of the complainant. It is his burden to prove the date of receipt. Therefore, there was no evidence before the court below to show that memo of dishonour of cheque was received by the complainant on a later date.

To that extent the court below is justified in its conclusion. If that be so, this appeal is without merits and is liable to be dismissed. I do so.

Sd/-
P.BHAVADASAN, JUDGE

AV

/True Copy/

P.A to Judge