

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

CRL.A.No. 239 of 2006 (F)

AGAINST THE JUDGMENT IN CC 244/2003 of CHIEF JUDICIAL MAGISTRATE
COURT, PATHANAMTHITTA DATED 18-10-2005

APPELLANT/COMPLAINANT:

K.V.SANTHOSHKUMAR, S/O.VELAYUDHAN,
KOCHUKIDANGIL VEEDU, PRAMADOM MURI, PRAMADOM
VILLAGE, KOZHENCHERRY.

BY ADVS.SRI.P.VIJAYA BHANU
SRI.PRASUN.S

RESPONDENTS/ACCUSD AND STATE:

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1. VIKRAMAN NAIR, AZHAKATHU VEEDU,
ARUVAPPULAM P.O., ARUVAPPULAM.
 2. STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADVS. SRI.K.SHAJ
SRI.SAJJU.S
R2 BY SMT.S.HYMA, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.239 OF 2006

Dated this the 26th day of October, 2015.

J U D G M E N T

Aggrieved by the acquittal of the 1st accused in C.C.No.244/2003 for the offence under Section 420 read with Section 34 of Indian Penal Code, complainant before the court below has come up in appeal.

2. Two persons were prosecuted for the offence under Section 420 read with Section 34 of Indian Penal Code. During the pendency of the proceedings, 2nd accused died and charge against him stood abated. 1st accused alone faced trial. After trial, court below found evidence wanting in respect of 1st accused and acquitted him.

3. The case put forward by the complainant is that the 1st accused was well acquainted with him and he had borrowed a sum of Rs.70,000/- on 17.07.2003. The agreement was to repay

the amount within three months. It is alleged that on the date on which the amount was borrowed, a cheque dated 17.10.2003 was issued to the complainant. Fully believing that the cheque would be honoured, complainant presented the cheque for encashment. However, cheque was returned with the endorsement 'signature differs'. On making enquiries, complainant came to know that the 1st accused did not hold an account in the Bank on which cheque was drawn but account was in the name of the 2nd accused. Alleging that the cheque was issued with the intention of cheating him, complaint was laid.

4. Cognizance of the offence was taken and summons was issued to the accused who entered appearance. The complainant was examined as PW1 and Exts.P1 to P3 were marked. After following the procedure under Section 244 Cr.P.C, charge was framed against the accused for the offence under Section 420 read with Section 34 IPC. The accused pleaded not guilty to the charge and claimed to be tried. The complainant was cross examined by the 1st accused only as 2nd accused passed away in the meanwhile. PW2 was also examined on the side of the

complainant and Exts.P4 and P5 were got marked.

5. The court below found that there was no evidence at all to show that the signature found on Ext.P1 cheque was one put by the 1st accused and also that the 1st accused had borrowed a sum of Rs.70,000/- from the complainant. Accordingly, the court held that the complainant has failed to establish the case against the 1st accused.

6. Learned counsel appearing for the appellant contended that the court below was not justified in holding that there was no corroborative evidence in the case so as to justify the case of the complainant. It is contended that there was no justification for denying the evidence of PW1. The complainant had given clinching evidence to show that the cheque was handed over by the 1st accused making him to believe that it was drawn by him from his account. At any rate, according to the learned counsel, court below was not justified in acquitting the 1st accused.

7. Learned counsel appearing for the respondent-1st accused, on the other hand, contended that this Court is exercising its appellate jurisdiction against an order of acquittal

and unless it is shown that there are compelling reasons, interference may not be justified. The complainant has not proved that the signature found on Ext.P1 was in fact affixed by the 1st accused and also that there is no evidence to show that the 1st accused had any transaction with the complainant. Referring to the statement under Section 313 Cr.P.C, it is pointed out that the 2nd accused had borrowed the amount and he had not borrowed any amount from the complainant. He stated that the complainant was a money lender. He also stated that he found the complainant and the 2nd accused quarreling on 18.11.2003 and he interfered in the matter and that the complainant is alleged to have threatened the 1st accused. However, he chose to adduce no evidence in support of his defence.

8. After evaluation of the material before it, court below found that the complainant has failed to establish his case.

9. It is true that the burden is on the complainant to show that the amount was in fact borrowed by the 1st accused and that the 1st accused had issued the cheque representing it to be a

cheque drawn from his account and containing his signature. The fact remains that the cheque was presented for encashment and it was returned on the ground that 'signature differs'.

10. Learned counsel appearing for the appellant-complainant pointed out that the complainant may be given an opportunity to show that the signature found on Ext.P1 cheque was in fact affixed by the 1st accused. By pointing out that the transaction was between the complainant and the 2nd accused, the 1st accused is trying to escape from the liability.

11. After having given anxious consideration to various aspects, it is felt that an opportunity ought to be given to the complainant to show that cheque was issued by the 1st accused from an account really belonging to the 2nd accused and also that the cheque contains the signature put by the 1st accused.

For the above reasons, this appeal is allowed. The judgment of the court below is set aside and the matter is remanded to the trial court to provide an opportunity to the complainant to show that the signature on the cheque is put by the 1st accused. The parties will be allowed to adduce further

evidence and the trial court then shall dispose of the case on merits. The parties shall appear before the trial court on 18.11.2015. The court below may make every endeavour to dispose of the matter as expeditiously as possible.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.