

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

CRL.A.No. 588 of 2006 ()

**AGAINST THE JUDGMENT IN ST 2/2003 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT - I, KOZHIKODE DATED 22-09-2005**

APPELLANT(S)/COMPLAINANT::

**IQRA RICE TRADING COMPANY,
CHEROOTY ROAD, CALICUT, TOWN POLICE STATION LIMIT
REPRESENTED BY ITS MANAGING PARTNER, ALIKOYA
S/O. KOYA MOIDEEN, FIHIR BHAVAN, NEAR SBI COLONY
KOTTOOLI, CALICUT.**

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENT(S)/ACCUSED AND THE STATE::

**1. P.M.ABDUL RAZAK, S/O. P.V.ABDULLA KOYA,
MANAGING PARTNER, P.M. ASSOCIATES, BIG BAZAR
CALICUT.**

**2. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSEUCTOR
HIGH COURT OF KERALA.**

**R1 BY ADV. SRI.P.SANJAY
R1 BY ADV. SRI.A.PARVATHI MENON
R1 BY ADV. SRI.JINU JOSEPH
R2 BY PUBLIC PROSEUCTOR SMT. LILLY LESLIE**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27-10-2015,
ALONG WITH CRA. 592/2006, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. Nos. 588 & 592 of 2006

Dated this the 27th day of October, 2015

J U D G M E N T

In both these cases, appeals arise out of order of acquittal in S.T.Nos. 2/2003 and 44/2003 before the Judicial First Class Magistrate-I, Kozhikode for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. The complainant's case is that he carries on the wholesale business of rice and related goods. The accused used to purchase goods on credit and for the balance due, he issued cheques in favour of the complainant. When the cheques were presented for encashment, they were returned for want of funds in the account of the accused. Statutory notices were issued to the accused which invoked no response and since the amount remains unpaid, complaints were laid.

3. Cognizance of the offence was taken by the court below. After following the necessary procedures, summons

was issued to the accused. On appearance of the accused and after completing the formalities, particulars of offence were read out to him to which he pleaded not guilty and claimed to be tried. The complainant examined PW1 and had Exts. P1 to P15 marked.

4. After the close of the complainant's evidence, the accused was questioned under Section 313 Cr.P.C. wherein, he denied all the incriminating circumstances brought out in evidence against him and maintained that he is innocent.

5. The court below, on appreciation of the evidence, found that Exts. P4 and P5, the two cheques issued by the accused were from the account of M/s. P.M. Associates maintained with the Federal Bank, Cherooty Road branch. The evidence further indicated that the accused was being sued in his capacity as a Managing Partner of the concern mentioned above. The court below found that neither in the complaint nor in the evidence of PW1, there is any reference to the status of the accused as a Managing Partner of the

concern from whose account the cheques were drawn. The court below found it difficult to accept the contention put forward by the complainant that the accused is impleaded in this case in his capacity as Managing Partner and that is sufficient under Section 141 of the Negotiable Instruments Act. Holding that there was no evidence to show that the accused was in charge of the affairs of the concern from whose account the cheques were issued, the court below acquitted the accused.

6. The learned counsel appearing for the appellant pointed out that the finding of the court below cannot have any support in law and in law it is sufficient if the accused is proceeded against as if he represents the firm. The learned counsel also pointed out that the matter has been settled out of court and nothing survives for consideration.

7. It is difficult to accept the contention raised by the learned counsel for the appellant that the accused, who is shown as in his individual capacity in the complaint and it

will be deemed to be representing the firm from whose account the cheques have been drawn towards the discharge of liability to the complainant. It is clear from the evidence and complaint that the complainant was intending to proceed against the firm namely M/s. P.M.Associates. If that be so, it had necessarily to be averred and established that the accused was in control of the business of the firm. Even though the court below found that money was due from the firm since there was no averment in the complaint and in the evidence adduced by PW1 that the accused was in charge of the affairs of the firm, the offence will not lie. In law, there is no reason to take a different view and the court below seems to be fully justified in its conclusion that in the complaint as it now stands, the accused is shown as in his individual capacity and not as a person in charge of the affairs of the firm from which amounts were due to the complainant. No grounds are made out to interfere with the findings of the court below.

These appeals are without merits and they are accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

ds

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P.A. to Judge