

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

CRL.A.No.785 of 2006

AGAINST THE JUDGMENT IN ST 3105/2002 of JUDICIAL MAGISTRATE OF
FIRST CLASS - I, PERINTALMANNA DATED 07-12-2005

APPELLANT/COMPLAINANT:

K.A.THOMAS, S/O. LATE ABRAHAM,
PROPRIETOR, THACHINGADAM RUBBER LATEX WORKS,
MALAPPURAM.

BY ADV. SRI.DILIP MOHAN

RESPONDENTS/ACCUSED AND STATE:

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1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.
 2. DR.GURU SUNDARAM,
MANAGING DIRECTOR, PADMALAKSHI RUBBER
PRODUCTS P.LTD.,
PERUMALIKOVIL STREET, MADURAI.

R2 BY ADVS. SRI.K.MANOJ CHANDRAN

SRI.P.R.AJITHKUMAR

R1 BY SMT. S. HYMA, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
22-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.785 OF 2006

Dated this the 22nd day of December, 2015.

J U D G M E N T

Aggrieved by the acquittal in a proceedings under Section 138 of the Negotiable Instruments Act, the complainant before the court below has come up in appeal after obtaining leave of this Court.

2. According to the complainant, he is engaged in the business of manufacture and supply of rubber products and is closely associated with the accused who was the Managing Director of M/s.Padmalakshmi Rubber Products (Pvt) Ltd. The complainant used to supply latex to the accused for several years and in discharge of the amount due from the accused in this transaction, he issued Ext.P1 cheque. The cheque, on presentation, bounced for want of funds. Though statutory notice was issued to the accused, he did not respond. This compelled the complainant to lay the complaint.

3. Cognizance of the complaint was taken and after following necessary procedures, summons was issued to the accused. He entered appearance and was given copy of the documents and thereafter particulars of offence were read out to him. He pleaded not guilty and claimed to be tried. That made the complainant to examine himself as PW1 and mark Exts.P1 to P6.

4. After the close of the complainant's evidence, accused was questioned under Section 313 Cr.P.C wherein he denied all the incriminating circumstances put to him.

5. On the side of defence, DW1 was examined and Exts.D1 to D9 were marked.

6. The lower court, on appreciation of evidence, came to the conclusion that amount, if at all as claimed by the complainant is true, had been discharged by subsequent payment by the accused and that is very clear from various documents produced before court. Holding so, accused was acquitted.

7. Challenging the acquittal, learned counsel appearing for the complainant pointed out that once issuance of cheque is

admitted, presumptions under Sections 118 and 139 of the Negotiable Instruments Act follow and the burden shifts to the accused to prove otherwise. This cardinal principle has been lost sight of by the court below. It is also pointed out that the finding regarding limitation is erroneous and is not supported by evidence. It is further pointed out that there is no proper consideration of evidence and the findings of the court below cannot be supported in law.

8. Learned counsel appearing for the respondent-accused pointed out that the accused had produced several documents to show that the amount due to the complainant has been discharged and the evidence adduced by the accused shows that no amount was outstanding to be paid to the complainant and there should have been some effort on the part of the complainant to establish that there was a debt for the discharge of which Ext.P1 cheque was issued.

9. It is not in dispute that the cheque is issued by the accused. Ext.P5 is a copy of lawyer's notice and the postal receipt Ext.P5(a) is dated 19.04.2002. The accused's contention

is that he had received the notice on 22.04.2002. The court below found that Ext.P6 acknowledgment card dated 06.05.2002 produced by the complainant cannot be in relation to the notice issued for dishonour of cheque in question. It has to relate to some other transaction. The lower court considered the receipts from post office and various other documents and has come to the conclusion that the complaint was filed beyond the period stipulated by law. On going through the records, it appears so.

10. Coming to the contention regarding discharge, it is significant to notice that the accused admits issuance of cheque. There has to be transaction between the two and the complainant used to supply latex to the accused and the accused used to issue cheques for the value of the articles along with the demand order and when the payment is made, the cheque is returned. Ext.D2 is the demand draft drawn in favour of Thachinganadam Rubber Latex Works which is admittedly the business concern of the complainant. Ext.D2 is dated 06.12.2001. It is for Rs.24,925/-. Ext.D3 is also a Demand Draft dated 06.12.2001 for the same amount. According to the accused, these two demand drafts

relate to the transaction in question. Ext.D4 is a receipt issued by one Benny Thomas acknowledging the receipt of Exts.D2 and D3. The said Benny Thomas is none other than the son of the complainant.

11. The court below has discussed in detail the impact of Exts.D2, D3 etc. to come to the conclusion that the amount due to the complainant stands discharged through various payments said to have been made by the accused through the documents referred to in the judgment. It finally came to the conclusion that Exts.D2 and D3 completely discharged the liability due to him.

12. The contention that issuance of cheque is admitted and presumption under Section 118 of Negotiable Instruments Act is attracted cannot be accepted. The initial burden to prove that there is an existing debt for the discharge of the said debt cheque is issued is on the complainant. After that burden is discharged, then only the burden shifts to the accused. Apart from contending that Ext.P1 cheque was issued under the circumstances mentioned above, there are no other items of

evidence for the complainant to justify his case.

13. After having gone through the records, it is felt that no error has committed by the court below. This Court is exercising its appellate power against an order of acquittal and unless there are compelling reasons, it may not be justified in interfering with the findings of the court below. There is no such compelling reasons made out in the case on hand and therefore the finding of the court below is just and proper.

Result is that this appeal is without merits and it is liable to be dismissed. I do so.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.