

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 14TH DAY OF SEPTEMBER 2015/23RD BHADRA, 1937

CRL.A.No. 500 of 2009 ()

AGAINST THE JUDGMENT IN STC 232/2007 of ADDL.C.J.M.,THALASSERY.

APPELLANT/COMPLAINANT:

T. SURENDRAN, S/O. VASU, AGED 40 YEARS,
KUNDATHIL HOUSE, MUZHUPPILANGAD AMSOM,
MAMMAKUNNU DESOM, KADAMBUR.

BY ADV. SMT.DAISY A.PHILIPOSE

RESPONDENT(S)/COMPLAINANT & STATE:

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1. SAKEENA, W/O. MOIDU, 50 YEARS,
SHAMSH, CHIRAYIL PEEDIKA, CHEMBALA P.O.,
AZHIYOOR PANCHAYAT, VATAKARA TALUK,
KOZHIKODE DISTRICT.
 2. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1 BY ADV. SRI.SATHEESHAN ALAKKADAN

ADV. SRI.A.ARUNKUMAR

R2 BY PUBLIC PROSECUTOR SHRI. C.K. JAYAKUMAR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
14-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No. 500 of 2009

Dated this the 14th day of September, 2015.

JUDGMENT

Aggrieved by the dismissal of the complaint filed by him, the complainant has come up in appeal.

2. According to the complainant, the accused borrowed a sum of Rs. One Lakh from him and then issued Ext.P1 cheque for discharge of the same. That cheque on presentation bounced for want of funds. Statutory notice was issued which was returned unclaimed. As the amount remained unpaid, the complaint was laid.

3. It is seen from the records that the complaint was filed beyond the period stipulated in the Act and therefore a delay condonation petition was filed. Delay was condoned and the complaint was taken on file. In response to the summons issued to the accused, the accused entered appearance. Particulars of the offence were read out to her,

who denied having committed the offences and claimed to be tried. The complainant therefore had P.Ws.1 and 2 examined and Exts. P1 to P8 marked. After the close of the complainant's evidence the accused was questioned under Section 313 Cr.P.C. and she denied all the incriminating circumstances, but did not chose to adduce evidence in support of her defence.

4. The court below found that the initial burden lies on the complainant to prove the due execution of the cheque. Since the complainant failed to prove due execution, the complaint was dismissed.

5. Assailing the dismissal of the complaint, it is urged that once the cheque is issued and the signature is not denied, presumption under Section 139 of the Negotiable Instruments Act is attracted and the burden then shifts to the accused to prove that the cheque was given in some other circumstance and she has the obligation to explain the circumstances under which the cheque came into the

possession of the complainant. In the case on hand, the reason given by the court below that the complaint is not supported by evidence is not correct and unsustainable and the court below ought to have accepted the complaint.

6. The respondent on the other hand contended that the view taken by the trial court is correct and does not call for any interference. The date of handing over of the money and date of receiving the cheque are not stated. It is not stated whether the cheque was brought filled up or it was signed in his presence. Even assuming for argument sake that the cheque contains the signature of the accused, there is no evidence to show that it was given to the complainant for the amount due from him. The evidence shows the intervention of one Ashraf and the accused had a case that it was a mischief made by Ashraf. Signature of Ashraf would not have been made on the reverse side of the cheque if he had nothing to do with the transaction. According to the

complainant also, the cheque does not contain the signature of the complainant on the reverse side. In all probabilities of the case, the court below found that the complainant had failed to establish the case against the accused. That is a possible view on the materials available on record. It is also contended that it is not necessary for the accused to adduce independent evidence in support of his case and he can succeed on the weakness of the evidence furnished by the complainant.

7. There seems to be considerable force in the submission made by the learned counsel for the respondent. In the complaint what is stated is that the accused is familiar to the complainant. But at the time of evidence, he says that the accused is the wife of his close friend. This statement made at the time of evidence is conspicuously absent in the complaint. The date on which sum of Rs.One Lakhs was received by the accused is conspicuously absent in the

complaint. It is not clear from the complaint or from the evidence whether the cheque was given on the same day or at a later date. But what would be gathered is that the cheque was given at a later date. It is not stated by the complainant that cheque was brought filled up or that it was signed in his presence.

8. Presumption under Section 139 of the N.I. Act is available only when due execution of the cheque is not disputed. Merely because the cheque contains the signature of the accused, it does not lead to the conclusion that it was issued in discharge of a debt. The existence of debt and due execution of cheque will have to be proved by the complainant.

9. On facts and in the light of the evidence, the view taken by the court below could not be said to be perverse. It is a possible view.

This appeal is without merits and it is accordingly dismissed.

P. BHAVADASAN,
JUDGE

sb.