

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

CRL.A.No. 514 of 2007 ()

**AGAINST THE JUDGMENT IN ST 970/2004 of JUDICIAL FIRST CLASS MAGISTRATE-II,
PALAKKAD DATED 30-05-2006**

APPELLANT(S)/COMPLAINANT:

**S.DINESH BABU
NOW RESIDING AT `SREENILAYAM',
MANNAM P.O., NORTH PARUR
ERNAKULAM-683 520.**

**BY ADVS.SRI.T.C.SURESH MENON
SRI.JIBU P THOMAS
SRI.SUNIL J.CHAKKALACKAL**

RESPONDENT(S)/NOT PARTY/ACCUSED:

**1. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.**

**2. SARALA RAJAN, NOW RESIDING AT
44/1478A, `PRAYAG', L.F.C. ROAD
KALOOR, KOCHI-682 017.**

BY PUBLIC PROSECUTOR SRI. C.K. JAYAKUMAR

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 514 of 2007

Dated this the 18th day of September, 2015

J U D G M E N T

Aggrieved by the acquittal of the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, the complainant has come up in appeal.

2. Interestingly enough, the complainant and the accused are in laws. To be more precise, the complainant is the son-in-law of the accused. The allegation is that on 19.12.2002, the accused borrowed a sum of ₹2,50,000/- and issued Ext.P1 cheque dated 16.09.2003. The cheque on presentation bounced for want of funds. Statutory notice was issued by the complainant to which a reply containing false statement was made by the accused. Since the amount was not repaid, a complaint was laid.

3. Cognizance of the offence was taken and summons was issued to the accused. On appearance of the accused and after completing the formalities, particulars of

the offence were read out to her to which she pleaded not guilty and claimed to be tried. The complainant therefore examined PWs 1 and 2 and had Exts.P1 to P6 marked.

4. After the close of complainant's evidence, the accused was questioned under Section 313 Cr.P.C. She denied all the incriminating circumstances brought out in evidence against her and maintained that she is innocent. The defence examined DWs 1 to 6 and had Exts. D1 to D29 marked.

5. On appreciation of materials before it, the lower court formed the opinion that the plea of defence put forward by the accused is more probable and accordingly, acquitted the accused.

6. Assailing the acquittal, the learned counsel for the appellant pointed out that it was unmerited and unwarranted. It is too difficult to believe the story that the couple, i.e., the accused and her husband would have left the place leaving everything open to be taken by anybody

from the house. They say that cheque book, ATM card and all such important documents were left unattended to in the house so that anybody can come in and take it away. The learned counsel also pointed out that the reply notice has considerable significance in this context. In the reply notice, it is held that some how, the complainant had managed to procure the cheque of the accused. At the time of giving evidence, DW5 has stated that the complainant with the intention of committing offence, entered the house and took away the cheque book. This aspect is omitted to be noticed by the court below. The learned counsel went on to point out that even assuming that the complainant had borrowed money from various sources, it does not mean that he did not have financial capacity to pay the amount to the accused.

7. In this context, the learned counsel drew the attention of this Court to the fact that the wife of the complainant had availed of a loan of ₹1,50,000/- and

therefore amount was available with the complainant to pay to the accused. The learned counsel pointed out that the court below simply stated that it is probable that the story put forward by the accused is more reliable, is without any basis or foundation. It is therefore contended that the acquittal cannot stand.

8. True, the accused denied her signature on the cheque and the issuance of cheque and therefore, the burden is on the complainant to prove the due execution of the cheque. He has stated that after borrowing the amount, the accused issued a cheque dated 16.09.2003 signed by her. There is some substance in the complaint raised by the learned counsel for the appellant that the court below was not justified in coming to the conclusion that the complainant might not have the financial capacity to pay the amount to the accused. The complainant has adduced evidence to show that his wife had taken a loan of ₹1,50,000/- and balance amount was provided by him. He

had produced documents to that effect. Further, the accused has not mounted the box. Instead her husband has mounted the box. It cannot be omitted to be noticed that according to the version given by the couple, they had gone to Madras in June, 2003 and the husband of the accused returned almost immediately, i.e. after two days. They took 1½ years to lodge the FIR and that too only after the complaint had been filed. The intention of filing the complaint to the Police is therefore obvious. Merely because it is shown that the complainant had taken money from the various sources, it does not mean that the accused had not issued the cheque.

9. The court below seems to have given undue significance to the documents produced by the accused forgetting the fact that once it is shown that the cheque contained the signature of the accused, it goes a long way in showing that there must be some transaction between the two. Except for making a bare denial of signature and all

transactions, there is no attempt from the side of the accused to show that the cheque was signed by her.

10. For the above reasons, this appeal is allowed. The impugned order is set aside and the matter is remanded to the trial court for fresh disposal in accordance with law and in the light of what has been stated above.

Parties shall appear before the court below on 30.10.2015. Both sides are at liberty to adduce further evidence, if they so choose. The matter may be disposed of as expeditiously as possible.

Sd/-
P.BHAVADASAN
JUDGE

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//True copy//

P.A. to Judge