

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

CRL.A.No. 581 of 2007

AGAINST THE JUDGMENT IN CC 42/2004 of JUDICIAL MAGISTRATE OF FIRST
CLASS-III, KOTTAYAM DATED 24.11.2006

APPELLANT/COMPLAINANT:

SANTHOSH J. KANDAMKULATHY,
KANDAMKULATHY HOUSE, KARAPUZHA P.O., KOTTAYAM.

BY ADV. SRI.MATHEW JOHN (K)

RESPONDENTS/ACCUSED AND NOT PARTY:

1. SYAMALA CHANDRAN,
VIVEK BHAVAN (MANIMANDIRAM), KARAPUZHA P.O.,
KOTTAYAM.
2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R1 BY ADV. SRI.M.P.MADHAVANKUTTY
R2 BY SMT. HYMA, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
02-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.581 OF 2007

Dated this the 2nd day of November, 2015.

J U D G M E N T

Aggrieved by the order of acquittal in C.C.No.42/2004 before the Judicial First Class Magistrate Court-III, Kottayam, complainant before the court below has come up in appeal after obtaining leave of this Court.

2. The short case absolutely necessary for the disposal of the appeal are as follows:

According to the complainant, an amount of Rs.4,30,000/- was due from the accused and towards partial payment of the said amount, three cheques dated 17.11.2003; two cheques for an amount of Rs.1 lakh each and one cheque for Rs.10,000/-was issued to the complainant. The cheques were presented for encashment. But they were returned for want of funds. Statutory notice issued invoke no response. Hence complaint was laid.

3. The court before which complaint was laid took cognizance of the offence and after following necessary procedures, issued summons to the accused. On appearance of the accused, copies of the documents were furnished to her and particulars of offence were read out to her. She pleaded not guilty.

4. The complainant therefore examined himself as PW1 and had Exts.P1 to P13 marked.

5. After the close of the complainant's evidence, accused was questioned under Section 313 Cr.P.C. She denied all the incriminating circumstances put to him and maintained that she is innocent. In her defence, she examined DWs 1 and 2 and had Exts.D1 to D5 marked.

6. Even though court below found that entrustment of Exts.P1 to P3 were admitted, the plea taken by the complainant that they were issued in partial discharge of the debt was not proved by the complainant. The court below, finding that the complainant has not succeeded in proving the original transaction, held that the complainant should fail in his attempt

and accordingly, acquitted the accused.

7. Assailing the acquittal, learned counsel appearing for the appellant contended that the court below has not addressed itself to the evidence in the proper manner and does not understand the case put forward by the complainant. Reference was made to statutory notice issued by the complainant and it was pointed out that the complainant was not seeking the amount of Rs.4,30,000/- but only the amount covered by Exts.P1 to P3 which have been dishonoured for want of funds. It is also pointed out that there is a plea of discharge made by the accused and if that be so, the burden is on him and this fact is omitted to be noticed by the court below. It is also pointed out by the learned counsel that a suit had been filed in respect of the transaction and that stands decreed. This aspect has also been overlooked by the court below. It is, therefore, contended that relevant aspects have not been taken into consideration and that has resulted in a wrong order being passed.

8. Learned counsel appearing for the respondent-accused, on the other hand, contended that the appellant was unable to

prove the original transaction which he pleaded in respect of which partial payment was made. The court below was therefore justified in coming to the conclusion that the transaction has not been established. Learned counsel also pointed out to this Court that the claim made by the complainant that Exts.P1 to P3 were issued on 17.11.2003 cannot be true as could be seen from the statement of account produced by the accused. Learned counsel further pointed out that reply notice was in fact issued to the complainant. Still he did not bother to establish the original transaction. Even though court below found that there was money transaction between the two, it was not as alleged by the complainant and therefore, on failure of the complainant to establish the transaction as claimed by him, the accused is entitled to acquittal. The said finding, according to the learned counsel, does not suffer from any legal infirmity and therefore acquittal was proper and justified.

9. After having heard the learned counsel on both sides and also after having perused the judgment, there seems to be considerable force in the contention raised by the learned counsel

for the respondent. Prima facie, it looks as if a plea of discharge. But, on a close scrutiny, it can be found that the real plea taken by the accused is that cheques were not issued as alleged by the complainant and not in terms as mentioned in the complaint. It is, of course, admitted by the accused that there were money transactions between the two. The court below was inclined to accept that Exts.D4 and D5 documents evidences the payment. This Court, on scrutiny of the records, found that Exts.P1 to P3 were issued from a cheque book where other cheques were encashed in 2000. Recalling the claim made by the complainant, three cheques involved were issued on 17.11.2003. On facts, this Court finds it extremely difficult to believe and it is quite improper that the accused would have retained three cheques in the same cheque book from which rest of the cheques were issued in 2000 itself so as to give them to the complainant in 2003. This also, to a great extent, belies the claim made by the complainant. It is very clear that Exts.P1 to P3 cheques have not been issued as alleged by the complainant. It is true that the claim made in the statutory notice is only with regard to the

amounts covered by Exts.P1 to P3. Since the complainant has not been able to establish that the cheques were issued as claimed by him and also that the transaction as claimed by him has not been established, court below was justified in acquitting the accused.

This Court finds no reason to interfere with the judgment passed by the court below.

This appeal is without merits and it is accordingly dismissed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.