

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

CRL.A.No.1036 of 2006

AGAINST THE JUDGMENT IN CC 729/2002 of COURT OF JUDICIAL
MAGISTRATE OF 1ST CLASS, VAIKOM DATED 23.01.2006

APPELLANT/COMPLAINANT:

MANOJ S., S/O. SOMANATHAN,
BAIJU BHAVAN, VADAKKEMURI VILLAGE, UDAYANAPURAM P.O.,
VAIKOM TALUK.

BY ADVS.SRI.P.SANJAY
SRI.A.PARVATHI MENON
SRI.JINU JOSEPH

RESPONDENTS/ACCUSED & STATE:

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1. VIPIN CHANDRAN, S/O. SREEDHARAN,
SREE NILAYAM, VADAYAR VILLAGE, VADAYAR P.O.,
VAIKOM.
 2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADVS. SRI.V.T.MADHAVANUNNI
SRI.J.ABHILASH
SRI.V.A.SATHEESH
R2 BY SRI.C.K. JAYAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
12-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.1036 OF 2006

Dated this the 12th day of October, 2015.

J U D G M E N T

Aggrieved by the judgment dated 23.01.2006 in C.C.No.729/2002 whereby the accused was acquitted of the offence under Section 138 of the Negotiable Instruments Act, the complainant has come up in appeal.

2. The case put forward by the complainant was that after having borrowed a sum of Rs.95,000/- from the complainant, when the money was demanded back, in order to discharge the liability, Ext.P1 cheque dated 15.05.2002 was issued to the complainant. On presentation of the cheque, it bounced for want of funds. Though notice was issued to the accused, he sent a reply containing false allegations. Since the amount remained unpaid, complaint was laid.

3. The court below took cognizance of the offence and after following necessary formalities issued summons to the accused. On appearance of the accused, particulars of offence were read

out to him, to which, he pleaded not guilty.

4. The complainant examined himself as PW1 and had Exts.P1 to P7 marked.

5. After the close of the complainant's evidence, accused was questioned under Section 313 Cr.P.C. He denied all the incriminating circumstances brought out in evidence against him and maintained that he is innocent. Further he stated that he was a subscriber to two chitties run by one George who was a close friend of the complainant, of which complainant was also a partner. When the chitty amount was received, he had issued blank cheques to the chitty company which have been misused by the complainant. In support of his case, he examined DWs 1 to 3 and marked Exts.D1 to D3.

6. The court below persuaded by the fact that DW1, former Panchayath President, has spoken to about he having intervened in the dispute between the parties and tried to settle the matter, came to the conclusion that the case put forward by the accused is more probable and accordingly order of acquittal was passed.

7. Assailing the acquittal, learned counsel appearing for the

appellant contended that the court below has persuaded on a wrong premises and reached a wrong conclusion. There is nothing to show that the complainant was a partner of chitty business and the fact that no security was taken at the time of handing over of money to the accused does not help the accused much. Learned counsel pointed out that evidence of DW1 is to the effect that he had mediated the matter about nine months ago and if that be so, it could not have been in relation to the case mentioned by the accused. The mere fact that date of borrowal is not stated by itself is not a ground to dismiss the complaint. There has not been proper appreciation of evidence in the case and the court below has been carried away by the fact that no date of borrowal as such has been mentioned.

8. Learned counsel appearing for the respondent-accused, on the other hand, tried to sustain acquittal. It is pointed out that unless it is shown that the appreciation of evidence is perverse, interference in the appellate stage may not be justified even assuming a different view is possible. In the case on hand, there is evidence to show that the accused was a subscriber to

two chitties run by one George of which complainant was also a partner. It is clear from the evidence that when the chitty amount was received, two blank cheques were given by the accused, one of which has been misused. The court below has accepted the case put forward by the accused and there is no reason to disbelieve that version. In short, the contention is that no grounds are made out to interfere with the judgment of the court below.

9. It is true that the date on which the amount was handed over to the accused is not seen mentioned either in the petition or in the evidence of PW1. However, the fact remains that Ext.P1 cheque contains the signature of the accused. The case put forward by the accused is that he had issued the cheque as security for the amount received for chitty to which he had subscribed. His claim was that one George was running a chitty of which complainant was one of the partners. There is no evidence regarding this aspect at all.

10. That the cheque bounced for want of funds is not in dispute. It is true that reply notice was issued by the accused

denying the liability. DW1 is examined to show that he had mediated in the dispute between the accused and the firm. According to his version, even though he had mediated, the matter was not settled and the dispute still remained. The evidence of DW2, who is none other than the brother of the accused, is to the effect that there was a dispute between the accused and the officer of the chitty company regarding the amount paid to the company. He intervened and talked to both persons and it is agreed that the case would be withdrawn if a sum of Rs.15,000/- is paid. He says that Rs.15,000/- was paid but the case was not withdrawn. If, as a matter of fact, the agreement was to withdraw the case on payment of Rs.15,000/-, there would have been no occasion for DW1 to mediate in the matter. DW1, on whose evidence reliance has been placed by the court below, says that even though he had mediated, he could not settle the dispute between the parties. The evidence of DWs 1 and 2 cannot co-exist. The court below ignored the evidence of DW2 and chose to believe the evidence of DW1. Going by the evidence of DW1, it can be seen that he has no case

that the matter was settled and it is clear from his evidence that the dispute remained alive. There is no case for the accused that the chitty transaction was closed and he had no liability towards the transaction. His only case is that a cheque has been misused by the complainant. Another factor which impressed the court below was that there was difference in the ink used for filling up the cheque and the ink used for affixing the signature and that causes suspicion. Merely because there is a change in the ink may not be a reason to discard the case of the complainant. Even though the accused tried to characterise the complainant as a stranger, it can be seen from his own evidence that they were familiar to each other. If, under those circumstances, the complainant chose to hand over a sum of Rs.95,000/- without security, he cannot be found fault with.

11. The above vital aspects have not been adverted to by the court below and the court below has simply believed the evidence of DW1 which does not help the accused in any way. More so the evidence furnished by DW2.

12. This Court is unable to accept the finding of the court

below that the complainant has not succeeded in establishing the case against the accused. Therefore, a fresh appreciation of evidence is absolutely necessary.

For the above reasons, this appeal is allowed. The judgment of the court below 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. The parties will appear before the trial court on 09.11.2015. Both parties will be at liberty to adduce further evidence.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.