IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

CRL.A.No. 1338 of 2006 ( )

AGAINST THE JUDGMENT IN CRA 437/2004 of ADDL. SESSIONS COURT-I, MAVELIKKARA.
C.C. NO. 520/01 OF JFCM-I, CHENGANNUR.

APPELLANT(S)/RESPONDENT/COMPLAINANT:

T.A. JOSEPH,
MANAGING PARTNER, SAY WOOD AND PRODUCTS,
KALLISSERY, CHENGANNUR, REP. BY
POWER OF ATTORNEY HOLDER
THOMAS VARKEY, THATTAROOZHATHIL VEEDU,
UMAYATTUKARA MURI, THIRUVANVANDOOR VILLAGE,
CHENGANNUR TALUK.

BY ADV. SRI.V.MANOJ KUMAR

RESPONDENT(S)/ACCUSED & STATE:

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1. P.G. RADHAKRISHNAN NAIR, S/O.BALA KURUP,
   BHAKTIVILASOM, MULAKUKZHA, CHENGANNUR.

2. STATE OF KERALA,
   REP. BY ITS PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA,
   ERNAKULAM.

R1 BY ADV. SRI. ASOK M. CHRIYAN
R2 BY PUBLIC PROSECUTOR SMT. LILLY LESLIE.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19-11-2015 ALONG WITH CRL.A.1567/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. Nos. 1338 & 1567 of 2006

Dated this the 19th day of November, 2015

JUDGMENT

Since the issue involved in these two appeals are same and they arise out of the same transaction, though two separate proceedings were initiated, it is felt that it is only appropriate to dispose them off by a common judgment.

2. The complainant's case is that the accused borrowed on credit timber logs to the tune of Rs.2,05,080/-. Towards part payment of that amount, three cheques were given to the complainant. Later, it was found that an amount of Rs.80,000/- was due and it is claimed that a settlement was arrived at whereby out of the 10 logs given to the accused, seven logs will be taken back and balance 3 logs would be sold for Rs.50,000/- which will be given to the complainant.

3. The complainant's case is that in pursuance thereof cheques given were presented for encashment, but

they bounced for want of funds. Notice issued to the accused did not invoke any reply. Since the amount remained unpaid, two complaints were made in relation to the two cheques issued by the accused.

4. The court, before which the complaint was laid, took cognizance of the offence and after following the procedures, issued summons to the accused. The accused entered appearance and after giving copies of the documents as contemplated by law, the particulars of the offence were read out to him, to which he pleaded not guilty and claimed to be tried. The cheques in both the cases were marked as Exts.P1 and P2 respectively. In Crl.Appeal No.1338 of 2006, the cheque involved is dated 1.8.2001 while in Crl.Appeal No. 1567 of 2006 the cheque is dated 9.8.2001. In Crl.Appeal No. 1338 of 2006 P.W.1 was examined and had Exts. P1 to P7 marked. In Crl.Appeal No.1567 of 2002, P.W.1 was examined and Exts.P1 to P13 were marked. After denying the incriminating circumstances put to him while questioned

under Section 313 Cr.P.C., the accused examined himself as D.W.1.

5. The trial court in both the cases found that the complainant was successful in establishing their cases and therefore, found the accused guilty. In C.C. No. 520 of 2001 from which Crl.Appeal 1338 of 2006 arose, the accused was sentenced to undergo simple imprisonment for two months and to pay compensation of Rs.25,000/- to the complainant under Section 357(3) of Cr.P.C., in default, to suffer simple imprisonment for one month. Similar sentence was imposed in C.C. 518 of 2001 from which Crl.Appeal 1567 of 2006 arose.

6. Aggrieved by the conviction and sentence, the accused preferred two appeals, namely, Crl.Appeal Nos. 437 of 2004 and 438 of 2004 before Additional Sessions Court-I, Mavelikkara. The said court, on a re-evaluation of the evidence, found that the complainant has not been able to establish his case and a reasonable doubt is created in the

mind of the court regarding the issuance of the cheque as claimed by the complainant and it was held that the benefit of doubt should go in favour of the accused. Holding so, the appeals were allowed and the accused was acquitted.

7. Challenging the acquittal of the accused by the lower appellate court, in these two appeals, learned counsel for the appellant contended that the lower appellate court has erred both on facts and in law in acquitting the accused. The trial court has considered the evidence meticulously and has found that the amount covered by the cheques were due to the complainant and the ingredients necessary to attract Section 138 of the Negotiable Instruments Act are available. Learned counsel pointed out that there is no dispute regarding the fact that the accused had purchased timber logs from the complainant for the amount already made mention of. Learned counsel also pointed out that as per Exts. P11 and P12 the accused had admitted that a sum of Rs.80,000/- was due and it was agreed that seven logs will be taken back by

the complainant and balance three logs will be taken by him and Rs.50,000/- will be given to the complainant. Based on that agreement that the cheques were issued. They on presentation bounced for want of funds. It is clear from the evidence on record that there exists a liability for which the cheques were issued. Learned counsel also pointed out that defence was one of discharge and no amount was due from the accused. In that case, it is for the accused to discharge the burden. The trial court on a close evaluation of the evidence found that the complainant had established his case and the accused was convicted and sentenced as already mentioned.

8. According to the learned counsel, there are no grounds to interfere with the conviction and sentence. The lower appellate court, on the other hand, went on to hold that an amount of Rs.50,000/- was due on settlement of account and there is no subsisting debt due from the accused and therefore Exts.P1 and P2 cheques in these cases have not been

said to be issued for discharge of an existing debt. Holding so, the appeals were allowed and the accused was acquitted. This, according to the learned counsel for the appellant, is an erroneous approach to the evidence in the case. The lower appellate court has not adverted to the other items of evidence and has not considered the case of the complainant in its entirety. This has resulted in miscarriage of justice and the appellate court judgment cannot be sustained.

9. Learned counsel appearing for the respondent in these two appeals, on the other hand contended that apart from the paucity of pleadings in the complaint, the case projected by the complainant is that as a result of Ext.P12 settlement, a sum of Rs.50,000/- was due to the complainant. It was found that the cheques were issued long before the endorsement evidenced by Ext.P12(a), i.e. 18.8.2001, therefore it could not be said that the cheques were issued for an amount agreed to be paid after the date of the endorsement evidenced by Ext.P12(a). Further, learned

counsel drew the attention of this Court to the fact that the complainant admitted that after the cheques had been dishonoured, timber logs were taken away by him thereby no liability exists. These significant facts weighed with the lower appellate court and the lower appellate court was therefore justified in acquitting the accused. Learned counsel for the respondent cautioned this Court that this Court is exercising appellate jurisdiction in a case of acquittal and unless it is found that the findings are so perverse or that it is based on irrelevant considerations, even assuming a different view is possible, interference is not called for.

10. The fact that the liability which the complainant wanted to fix on the accused was born out of timber transaction between the two is not much in dispute. Complaint would say that the timber logs were purchased for an amount of Rs.80,000/- on credit and as part payment three cheques were issued. Finally complainant banks on Exts. P11 and P12(a) to fasten liability on the accused and it is his case

that it was for the discharge of the said debt the two cheques were issued. In other words, the case is that a sum of Rs.50,000/- was due as admitted by the accused in Ext.P12(a) and for the discharge of the same, two cheques were issued.

11. The trial court was inclined to accept the case put forward by the complainant and found that there was an existing liabiity. But one has to notice that the settlement arrived at as per Exts.P11 and P12(a) in Crl.Appeal No. 1567 of 2006 is dated 18.8.2001 and admittedly the two cheques in question were dated prior to that date. This fact weighed with the lower appellate court to come to the conclusion that the two cheques could not have been issued in pursuance of Ext.P11 and P12(a). Of course, the lower appellate court did not actually adjudicate the contention raised by the defence that Ext.P12(a) endorsement was not made by him.

12. Whether that was necessary or not was a different question. But the issue that arises for consideration was whether the complainant has been able to show that the

two cheques were issued in discharge of an existing liability. Here, the averment in the complaint has some importance. One may recall here that the liability is on the basis of sale of timber logs to the accused. Nowhere in the complaint, the complainant referred to the timber transaction. He simply says that for discharge of a debt, cheques were issued. It escapes one's understanding as to why the complainant felt shy to disclose the entire transaction in the complaint itself and put the accused on guard. A reading of the complaint would show that the accused had incurred liability of Rs.20,000/- independently and for the discharge of that debt the cheques were issued. Further, at the time of evidence, the issuance of the cheques was linked to the endorsement on Ext.P12(a). It is to be noticed that the cheques were issued prior to Ext.P12(a). It is this aspect which weighed with the lower court to come to the conclusion that the cheques were not issued as per Ext.P12(a) assuming it to be an endorsement said to have been made by the accused. Further, the lower appellate court was also impressed by the fact that P.W.1 in cross-examination stated that after the cheques were dishonoured and returned, the timber logs were taken away by the complainant. Further, again, P.W.1 submits that it was on settlement of accounts that the amount was found due from the accused. The lower appellate court found that there was no evidence of any settlement of accounts and therefore, it could not be said that the amount claimed by the complainant and covered by the cheques are due as balance outstanding on settlement of accounts.

13. In the light of the evidence available on record, it could not be said that the view taken by the lower appellate court is perverse or based on irrelevant materials. It is indeed a possible view in the light of the evidence adduced by P.W.1. It is possible to say that on a closer scrutiny, a different view may be possible. As has rightly been pointed out by the learned counsel for the respondent, this court is sitting in appeal against an order of acquittal, if it is found that the view

taken by the lower appellate court is a possible view, interference by the higher court is unwarranted. Applying that principle, the appeals are to fail.

Hence, these appeals are dismissed.

P. BHAVADASAN,
JUDGE

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