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. 958 of 2009 (D)

AGAINST THE JUDGMENT IN C.C. 251/2007 of J.M.F.C.-III, KOTTARAKAKARA.

PETITIONER/COMPLAINANT:

M/S.SREE GOKULAM CHIT & FINANCE CO. PVT. LTD,
ALPHONSA COMMERCIAL COMPLEX, MARKET JN.,
REPRESENTED BY S. PRADEEP, LEGAL CLERK,
MOOLATHARA THOPPIL, KANTRAMKANI,
MUNDRO ISLAND.P.O.,
KOLLAM.

BY ADVS. SRI.K.S.BABU
SMT.N.SUDHA

RESPONDENT(S)/ACCUSED & STATE:

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1. OMANAKUTTAN C.R., S/O. RAMAKRISHNAN,
ANANDABHAVAN, CHERUPOIKA, PUTHUR,
KOTTARAKKARA.

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

R1 BY ADV. SRI.SYAM J SAM
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. 958 of 2009

Dated this the 14th day of September, 2015.

JUDGMENT

Aggrieved by the dismissal of the complaint filed, a Chitty Company has come up in appeal. According to the complainant, for the amount due under a chitty transaction, the accused had issued Ext.P1 cheque, which on presentation bounced for want of funds. Statutory notice issued was cleverly avoided by the accused and since the amount remained unpaid, the complaint was laid.

2. The court below took cognizance of the offence. After following the necessary procedures, the court issued summons to the accused. On appearance of the accused before the court below, particulars of the offence were read over to him, to which he pleaded not guilty and claimed to be tried. The complainant therefore examined P.W.1 and marked Exts.P1 to P9 were marked. After the close of the prosecution

evidence, the accused was questioned under Section 313 Cr.P.C. He denied all the incriminating circumstances brought out in evidence against him and contended that the amount due from him to the chitty had already been paid by him and no amount is due to the company and the cheque issued as security has been misused by the company. He however, chose to adduce no evidence. The main defence was that the statutory notice was issued by the Central Office and therefore the complaint is not maintainable. It was also found that the company which had the necessary ledgers and accounts for the transaction had not produced the same to prove that the amount due as contained in the cheque was due to the company. Finding that the debt itself has not been established, dismissed the complaint.

3. As regards the first issue, whether the complaint is a proper one or maintainable would be decided at a later stage in the light of the decision taken on the other

significant questions. Coming to the second point, as rightly noticed by the court below, the Company must have an account which would show that as on the date of issuance of the cheque, the amount mentioned in the cheque is due to the company. Ext.P9 ledger produced by the Company is of no use in that regard. Going by Section 138 of the Negotiable Instruments Act, the initial burden is on the complainant to show that there was a debt for which the cheque was issued. Only if it is proved that the amount is due, the burden shifts to the accused and then presumption under Section 139 of the Act applies. The application of presumption under Section 139 of the Act is not something which is automatic, it depends upon the facts and circumstances of each case.

4. In the case on hand, it is contended that the accused had discharged the liability and that the cheque which was given as security was misused. However, the defence did not produce any document to show that amount was infact

due and cheque was issued much later. There is no attempt from the side of the complainant to show whether debt had been terminated or not. The basic necessity is not seen furnished by the company except Ext.P1 cheque.

5. Faced with the above situation, learned counsel for the appellant contended that an opportunity may be given to the appellant to substantiate the contention that amount as covered by Ext.P1 cheque is due.

6. After having given anxious consideration to the various aspects, it is felt that it is only appropriate that the Company be given an opportunity to show that the amount covered by the cheque is due as on the date of issuance of the cheque. In the light of the said fact, the decision regarding the maintainability of the complaint will also be considered.

For the above reasons, the judgment of the trial court is set aside and the matter is remanded to the trial court for fresh consideration in accordance with law and in the light of what has been stated above. The parties shall appear before the court below on 14.10.2015. The court below may give priority to this case and dispose of the same as expeditiously as possible.

P. BHAVADASAN,
JUDGE

sb.