

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

CRL.A.No. 1110 of 2007 ()

**AGAINST THE JUDGMENT IN CC 782/2004 of JUDICIAL FIRST CLASS MAGISTRATE -V,
(SPECIAL COURT FOR MARKLIST CASES) THIRUVANANTHAPURAM
DATED 28-02-2007**

APPELLANT(S)/COMPLAINANT:

**M/S.MULAMOOTIL CONSUMER CREDITS LTD., A COMPANY REGISTERED
UNDER THE COMPANIES ACT, 1956, HAVING ITS OFFICE AT HOMESTEAD
MUSEUM BAINS COMPOUND, NANDANCODE, THIRUVANANTHAPURAM
REPRESENTED BY ITS AUTHORIZED SIGNATORY ASSISTANT MANAGER,
(HEAD OFFICE OF THE COMPANY) S.RAVEENDRAN NAIR
S/O.LATE SANKARA PILLAI, 65 YRS, RESIDING AT .'ASWATHI'
SREEKRISHNA NAGAR, CHAVADIMUKKU, SREEKARIYAM,
THIRUVANANTHAPURAM -17.**

BY ADV. SRI.BIJU HARIHARAN

RESPONDENT(S)/ACCUSED & STATE:

- 1. N. NAJUMUDEEN , AGED 34 YEARS,
S/O.ABDUL KARIM, RESIDING AT
MUBEENA MANZIL, KANYAKULANGARA
VEMBAYAM P.O., THIRUVANANTHAPURAM.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM.**

**BY PUBLIC PROSECUTOR SRI. C.K. JAYAKUMAR
BY ADV. SRI.RAM MOHAN.G.
BY ADV. SRI.G.P.SHINOD
BY ADV. SRI.MANU V.**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 1110 of 2007

Dated this the 15th day of September, 2015

J U D G M E N T

The court below, finding that the statutory notice has not been issued, dismissed the complaint and acquitted the accused. The said order is under challenge.

2. In order to discharge a debt that is due to the company which is a finance credit company, the accused is said to have issued Ext.P1 cheque. That on presentation bounced for want of funds. Statutory notice which was issued to the accused, was not served on him even though the complainant would say that it was properly addressed. Since the amount remained unpaid, a compliant was laid.

3. Cognizance of the offence was taken and procedural formalities followed and summons was issued to the accused, who entered appearance. Subsequent formalities were also complied with and particulars of offence were read out to the accused. He pleaded not guilty

and claimed to tried. The complainant examined PWs 1 and 2 and had Exts. P1 to P10 marked.

4. After the close of complainant's evidence, the 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. On the defence side, the accused examined himself as DW1 and had Exts.D1 to D6 marked.

5. The court below found that Ext.P1 cheque was in fact issued by the accused in discharge of debt and the accused was not successful in discharging the burden of presumption available under Section 139 of the Negotiable Instruments Act. However, when the court went on to find that there is no evidence of notice having been served on the accused, which is a statutory pre-condition and in the absence of any evidence to show that notice has been served on the accused, proceedings could not lie. Holding so, the complaint was dismissed and the accused was

acquitted.

6. It is the said order that is assailed in this appeal.

7. The learned counsel appearing for the appellant contended that in all subsequent and previous communications addressed to the accused, he has received the summons, notice etc. in the same address in which Ext.P4 notice had been sent. The postal endorsement showed that there was no such addressee and therefore the notice was not served. To prove the due, sending of notice, PW2, the postmaster was examined, who stated that the registered address with No. 1670 could not be served. He also stated that the unserved notice has been sent back to the sender.

8. The learned counsel appearing for the appellant contended that going by Section 27 of the Interpretation and General Clauses Act, there is a presumption that if a cover is properly addressed and sent, it will be deemed to have been served. Apart from that presumption, the learned counsel

also contended that the various other documents addressed to the accused was received by him in the same address and it is inconceivable that notice alone could not have been served because the addressee was not available. The learned counsel for the appellant tried to characterize the conduct as a collusion between the accused and the postman concerned.

9. The learned counsel appearing for the respondent contended that true, there is a presumption under Section 27 of the Interpretation and General Clauses Act, but that arises only when it is shown that cover was properly addressed and sent in the due address of the person concerned. The best evidence would have been the cover which was returned which would show the address on the same. That alone has not been produced and that weighed with the court below and that is the reason for dismissing the complaint for which the court below cannot be found fault with.

10. There is considerable force in the submission made by the learned counsel for the respondent. The question is not what the actual address of the accused is but the question is whether Ext.P4 notice was sent in the proper address. None of the documents produced as of now would show that Ext.P4 notice was sent in the address in which the accused received the other postal articles. Of course, PW2 has stated that the article with No. 1670 could not be served and he has also stated that that was sent back to the sender.

11. If as a matter of fact, the complainant had produced the returned cover with the endorsement thereon, that would have sealed the fate of the accused for the complainant is obliged only to send the notice in the address given to them by the accused. However, unfortunately that was not done and that persuaded the court below to dismiss the complaint.

12. Considering the various facts, it is felt that an opportunity ought to be given to the complainant company to adduce further evidence in this regard to show that the notice was properly served on the accused in the given address.

13. 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 consideration in accordance with law and in the light of what has been stated above.

The parties shall appear before the court below on **28.10.2015**. It is ordered that personal appearance of accused is dispensed with unless his presence is absolutely necessary.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge