

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

CRL.A.No. 1568 of 2006 ()

**AGAINST THE JUDGMENT IN ST 680/2004 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT -I, PALAKKAD DATED 30-03-2006**

APPELLANT(S)/COMPLAINANT::

**G.SARASU, W/O. ARUMUGHAM,
NARASIMHAPURAM, HOUSE NO.436, CHADAYANKALAI
KANJIKODE WEST P.O., PALAKKAD.**

BY ADV. SRI.SAJAN VARGHEESE K.

RESPONDENT(S)/ACCUSED::

- 1. BHASKARAN, S/O. CHELLATHURAI,
DOOR NO.5/292, V.M.T. NAGAR, THADAGAM ROAD
KANUVAI, KOVAI-108, STATE OF TAMIL NADU.**
- 2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT. LILLY LESLIE

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 1568 of 2006

Dated this the 27th day of October, 2015

J U D G M E N T

Aggrieved by the order of acquittal in S.T. No.680/2004 before Judicial First Class Magistrate Court-I, Palakkad, for the offence under Section 138 of the Negotiable Instruments Act, the complainant before the court below, after obtaining leave of this Court, comes up in appeal.

2. According to the complainant, the complainant and the accused were good friends. The accused sought for loan of ₹50,000/- on 24.01.2003 assuring to repay the amount with 12% interest. The money was given to the accused. Since even after the period of repayment was over and the debt remained undischarged, demand was made and consequently, Exts.P1 and P2 cheques dated 29.11.2003 and 07.12.2003 for ₹25,000/- each were issued by the accused to the complainant. The cheques were presented for encashment but were returned with the endorsement

that the payments has been stopped by the drawer. A statutory notice issued to the accused invoked a reply containing false contentions. Since the amount remained unpaid, the complaint was laid.

3. Cognizance of the offence was taken by the court below. After following the necessary procedures, summons was issued to the accused. On appearance of the accused and after completing the formalities, copies of the records were furnished to him and particulars of offence were read out to him to which he pleaded not guilty and claimed to be 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. He filed a written statement vindicating his case and pointing out that there were no transactions between the

complainant and the accused. He contended that the two cheques, which are the subject matter of the litigation, were in fact given to the brother of the complainant, namely, Mr. Guruswamy for discharging a debt due and the amount so due to Guruswamy has been paid by way of two other cheques which Guruswamy had encashed. Even though the cheques in question were sought return of by the accused, the said Guruswamy did not return them and the complainant has misused those cheques. In his defence, he examined DWs 1 to 3 and had Exts. D1 to D9 marked.

5. On an evaluation of the evidence in the case, the court below formed the opinion that in the light of the evidence adduced by the accused and also the fact that the two cheques each for ₹25,000/- have been encashed by Guruswamy as could be evident from Ext.D1, the case of the accused is more probable and acquitted him from the charges levelled against him.

6. Assailing the acquittal, the learned counsel for the appellant contended that the court below has not addressed itself to the issues that actually arose for consideration. The accused had no consistent case at all regarding the two cheques said to have been issued by him. Reference was made to the statement made by the accused while being questioned under Section 313 Cr.P.C. There, according to the learned counsel, the case of the accused was that he had issued two blank cheques to Guruswamy and that later on, those amounts were paid by two other cheques and even though earlier cheques were sought return of, they were not returned. Referring to Ext.P7, a reply notice issued by the accused to the statutory notice issued by the complainant, the learned counsel pointed out that in Ext.P7 the case was that the accused had issued two undated cheques to Guruswamy and he had later on discharged the debt by two other cheques which were encashed. Attention was drawn to Ext.D7, which is a complaint said to have been filed by

the accused before the Judicial First Class Magistrate Court-I, Coimbatore, complaining of offences under Sections 468, 420, 471, 406 and 129(b) read with Section 34 of IPC against four persons including the complainant in this case. There the case put forward by the accused was that he had borrowed ₹50,000/- from Guruswamy. The defence taken up in the present case, the stand of the accused was that he joined a business run by Guruswamy and at that time, he gave two undated cheques for business purposes as security. Further case of the accused, according to the learned counsel, is that they could carry on the business only for a while and thereafter, two cheques for ₹25,000/- each were issued to Guruswamy to discharge the liability due to him and those cheques were encashed. Highlighting on the above aspects, the learned counsel pointed out that there are four different versions regarding the issuance of the two cheques in question. This would have been sufficient to show that the entire claim made by the accused

is untrue. The learned counsel went on to point out that the complaint before the Judicial First Class Magistrate Court-I, Coimbatore was referred for investigation under Section 156 (3) and a refer report was filed by the Police which was accepted by the court and the matter was closed. The learned counsel went on to point out that the court below placed implicit faith on Ext.D7 and on that basis held that the complainant had not proved the existence of liability. This conclusion drawn by the court below, according to the learned counsel, is founded on an erroneous evaluation of the entire evidence and it can be seen that Exts.P1 and P2 cheques were in fact issued by the accused in discharge of the liability due to the complainant. The learned counsel complained that there has not been a proper consideration of the case put forward by the complainant and the court below was carried away by the complaint filed by the accused namely Ext.D7.

7. There is no appearance for the respondents before this Court even though notice was issued to them informing the date of posting of the case.

8. From the evidence on record, it would appear that there is considerable force in the submissions made by the learned counsel for the appellant. Even though the accused disputed any relationship whatsoever with the complainant, he had no acceptable explanation as to how the cheques had come into the possession of the complainant. It is here that the inconsistent versions given by the accused highlighted by the learned counsel for the appellant assumes importance. At one point of time, he had a case that when he joined the business which was being run by the brother of the complainant, as security, he furnished two undated cheques each for ₹25,000/- and some signed blank stamp papers worth ₹50/-. One may pause here for a moment and consider whether as to what was the occasion for issuing two undated cheques as security at that point of

time. Whatever that be, at the time of questioning under Section 313 Cr.P.C., he had entirely a different case. In his written statement, he came forward with a case that he had issued two blank cheques to Guruswamy. One may remember that his initial case was that he had issued two undated cheques and the rest of the entries were made by him. Going further, when one looks at Ext.D7, the complaint laid by the accused before the Judicial First Class Magistrate Court-I, Coimbatore, his case was that he had borrowed ₹50,000/- from Guruswamy.

9. It is true that the accused had produced Ext.D1 to show that the two cheques have been encashed by Guruswamy from his account. He had also instructed the bank to stop payment of the two cheques in question by a memo dated 02.01.2004. However, it needs to be noticed that going by the complainant's version, postdated cheques were issued by the accused on 31.10.2003 dated 29.11.2003 and 7.12.2003 which were presented for encashment. The

case of the complainant has to be viewed in the light of the inconsistent stand taken up by the accused at different point of time. It is evident as contended by the learned counsel for the appellant that the accused had no consistent case regarding the issuance of the cheques in question. The mere fact that he has sent a communication to the Bank requesting stop payment or that he had made a publication as per Ext.D9 cannot absolve him of the liability under Exts . P1 and P2. The complainant has narrated in detail the circumstances under which Exts.P1 and P2 have been issued. There is nothing in the cross examination of PW1 the complainant as of now to show that the case put forward by her is untrue. Anyhow, it has to be mentioned that the complainant's case has not been considered at all by the court below and the court below was guided and carried away by Ext.D7 the complaint filed by the accused. The court below has also not analysed the various documents relied on by the complainant to find out whether the version

given by the accused could be accepted or not.

10. For the above reasons, it has to be held that there has not been a proper appreciation of the evidence in the case and the whole issue requires a reconsideration at the hands of the trial court.

11. In the result, this appeal is allowed. The impugned order is set aside. 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 shall appear before the court below on **24.11.2015**. The court below shall make every endeavour to dispose of the matter as expeditiously as possible, at any rate, within a period of four months from the date of appearance of the parties.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge