

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

SATURDAY, THE 21ST DAY OF NOVEMBER 2015/30TH KARTHIKA, 1937

CRL.A.No. 1792 of 2006 ()

**AGAINST THE JUDGMENT IN ST 1540/2003 OF JUDICIAL FIRST CLASS MAGISTRATE
-I, KOZHIKODE DATED 29-11-2005**

APPELLANT(S)/COMPLAINANT::

**M/S. MAHALASA FINLEASE (P) LTD.,
ADMN.OFF: 1ST FLOOR, LEELA TOWERS, KALLAI ROAD
KOZHIKODE, A COMPANY REP. BY ITS
POWER OF ATTORNEY HOLDER K. GIRISHAN
S/O. BHASKARAN.**

BY ADV. SRI.E.NARAYANAN

RESPONDENT(S)/ACCUSED & STATE::

**1. E.M. RAVEENDRAN, S/O. KUNHIRAMAN,
KEEPPANATTA HOUSE, P.O. PUTHUPPANAM, VADAKARA
KOZHIKODE.**

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

**R1 BY ADV. SRI.P.S.SREEDHARAN PILLAI
R1 BY ADV. SMT.C.G.PREETHA
BY PUBLIC PROSECUTOR SMT. S. HYMA**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 1792 of 2006

Dated this the 21st day of November, 2015

J U D G M E N T

Aggrieved by the acquittal of the accused for the offence under Section 138 of the Negotiable Instruments Act in S.T. 1540/2003 before the Judicial First Class Magistrate Court, Kozhikode, the complainant before the court below has come up in appeal after obtaining leave of this Court.

2. According to the complainant, which is a company represented by its power of attorney holder, the accused had availed of financial facility from the company under a hire purchase agreement for purchase of a vehicle. He made defaults in repayment of the amounts and the company demanded the amount. Notice was issued to the accused on 15.07.2003 and his guarantor also calling him upon them to effect payment that is due to the company. Later, the accused approached the company and offered to make a one time payment in full settlement of the liability

due from him. As agreed to by both sides, the accused issued Ext.P1 cheque for the sum of ₹32,500/-. On presentation, the cheque bounced for want of funds. The statutory notice issued to the accused had no impact on him. Since the amount remained unpaid, the complaint was laid.

3. The court before which the complaint was laid took cognizance of the offence and after following the necessary procedures, summons was issued to the accused. When the accused entered appearance, he was furnished with copies of the documents and particulars of offence were read out to him. He pleaded not guilty. The complainant therefore examined PW1 and had Exts. P1 to P6 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 however chose to adduce no evidence.

5. The court below found all issues in favour of the complainant except the issue regarding the competency of the complainant to lay the complaint. In the complaint, it was alleged that the power of attorney was laying the complaint on behalf of the company and that the power of attorney had been executed by the Managing Director, one Ramachandran Bhat. The court below held that there is no evidence to show that Ramachandra Bhat was the Managing Director and he had the authority to give a power of attorney to the complainant and accordingly, acquitted the accused.

6. Assailing the acquittal, the learned counsel for the appellant contended that the acquittal is totally unmerited and unfounded. In fact, there was no challenge to the competency of the power of attorney holder to lay the complaint and in the light of the said fact, the complainant was taken by surprise when the acquittal came on the basis that authority has not been proved. Had the authority of the

power of attorney to lay complaint was specifically challenged, the company would have adduced evidence to show that the person, who filed the complaint, was an authorised person by the company to conduct the litigation. At any rate, an opportunity ought to have been given to the company to show that the complaint is properly laid.

7. The learned counsel appearing for the respondent on the other hand contended that the court below has approached the issue in the right manner and it was for the complainant to show that the complaint is maintainable. The court below has found that there is no evidence regarding that aspect and has rightly acquitted the accused.

8. After having heard the learned counsel on both sides and after having perused the records, there seems to be some basis for the complaint voiced by the learned counsel for the appellant that the acquittal was unmerited. It is not seen from the records that there was specific denial from the side of the accused regarding the competency of

the power of attorney holder to lay the complaint. The power of attorney holder has specifically stated in his evidence that the Managing Director, Ramachandra Bhat had issued power of attorney authorizing him to conduct the litigation. There was no suggestion at all as could be seen from the records that Ramachandran Bhat was not the Managing Director. The court below went on to hold that since no evidence is produced to show that the Ramachandra Bhat was the Managing Director, the power of attorney cannot be held to be good.

9. One has to remember that when there was no specific challenge about the competency of the Managing Director or the person, who was the Managing Director, the power of attorney holder could not have thought about the necessity to adduce evidence to show that Ramachandra Bhat was in fact the Managing Director. Whether Ramachandra Bhat was competent to issue a power of attorney to represent the company is a different matter. It is

also a different question as to whether any resolution of the Director Board of the company is necessary to authorize a power of attorney holder to conduct the litigation. These aspects may have to be probed into. The reason given by the court below for acquittal cannot be sustained.

10. For the above reasons, this appeal is allowed. The acquittal passed by the court below 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 party shall appear before the lower court on **16.12.2015**. Both parties will be at liberty to adduce further evidence and the court below may dispose of the matter as expeditiously as possible.

Sd/-
P.BHAVADASAN
JUDGE

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//True copy//

P.A. to Judge