

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

CRL.A.No. 1516 of 2007 ()

IN ST 72/1995 of THE CHIEF JUDICIAL MAGISTRATE,THRISSUR DATED 20-02-1988

APPELLANT(S)/COMPLAINANT:

**E.S.I. CORPORATION, THRISSUR,
REP. BY INSPECTOR, REGIONAL OFFICE, E.S.I CORPORATION
THRISSUR.**

BY ADV. SRI.K.SANDESH RAJA

RESPONDENT(S)/ACCUSED/STATE:

- 1. K.S.ANILKUMAR
OPP. TO PUTHENAMBALAM TEMPLE, MUHAMMA POST
ALAPPUZHA DISTRICT.**
- 2. P.SABU, S/O LATE PURUSHOTHAMAN,
CONTRACTOR, T.S.NO.8(76, 77 AND 78)
PUTHENANGADI, MUHAMMA POST, ALAPPUZHA DISTRICT.**
- 3. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**

**R1 & R2 BY ADV. SRI.R.AZAD BABU
BY PUBLIC PROSECUTOR SMT. LILLY LESLIE**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

P.BHAVADASAN, J.

Crl.A. No. 1516 of 2007

Dated this the 04th day of December, 2015

J U D G M E N T

A very short point arises for consideration in this appeal against the acquittal with reference to an offence punishable under Section 138 of the Negotiable Instruments Act.

2. Before the court below there were two accused persons; A1 and A2. According to the Corporation, accused No.1 and the father of accused No.2 namely, Purushothaman were a joint contractors of Toddy Shop No.8 which was covered by the ESI Act. As they failed to pay the contribution due from 01.04.1992, 31.03.1993 plus interest thereon, notice was issued to both A1 and A2. In reply to the notice so received by A1, he is alleged to have issued a post dated cheque for ₹31,950/- for the full and final settlement of dues to the ESI. When the cheque was presented for encashment it was returned with endorsement "Payments stopped by Drawer". Statutory notice were

issued to the accused. Since the amount was not paid, 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, they were furnished with copies of the documents and particulars of offence were read out to them. They pleaded not guilty. The complainant therefore examined PWs 1 to 4 and had Exts. P1 to P10 marked. The accused in their defence had Ext.D1 marked.

4. After the close of complainant's evidence, the accused were questioned under Section 313 Cr.P.C. They denied all the incriminating circumstances brought out in evidence against them and maintained that they are innocent.

5. The court below, relying heavily on Ext.D1, found that the cheque was not issued towards any existing liability and therefore acquitted the accused.

6. Challenging the acquittal, the learned counsel for the appellant contended that the court below has misdirected itself both on facts and in law. The specific case put forward by the Corporation was that the first accused along with the father of the second accused was running a toddy shop which was covered by the ESI Act. Contributions were due from them. The further allegation was that when arrears fell due, notices were issued to both A1 and A2. In response to the said notice, A1 issued the cheque in question, while A2 prayed for time. The postdated cheque so given by A1 was presented for encashment which was returned with the endorsement "payments stopped by Drawer" and the complaint was laid after issuing the statutory notice. The learned counsel for the appellant pointed out that the court below was under the impression that the cheque has been issued by A2 and since Ext.D1, an order of the ESI Court, Alappuzha, exonerated the legal heirs of late Purushothaman from any liability, the complaint

cannot lie. This according to the learned counsel is as a result of misreading of the complaint as is evidenced in the judgment. Even assuming A2 cannot be made liable or may not be liable in law, the position of A1 is different. He stands independently and it is his cheque that was returned with the endorsement "payments stopped by Drawer". He cannot be treated as a legal heir of late Purushothaman and his case will have to be considered independently. That has not been done and that has resulted in a wrong decision being rendered.

7. The learned counsel appearing for the respondent tried to support the findings of the court below by pointing out that a reading of the judgment of the court below would suggest that the cheque was issued by A2 or at least that the cheque was issued on behalf of A2 by A1. If that be so, according to the learned counsel, Ext.D1 is the complete answer to the claim made by the Corporation.

8. After having heard the learned counsel on both sides, there seems to be some substance in the complaint raised by the learned counsel for the appellant. It was not as if the complaint proceeded on the basis that A1 had issued the cheque on behalf of A2 or that A2 had issued the cheque. The definite allegation in the complaint was that A1 and the father of A2 were joint contractors in respect of a toddy shop which was covered by the ESI Act and both were liable for the arrears due in equal proportion. In other words, they were jointly and severally liable. It was towards the discharge of that debt, that A1 had issued Ext.A1 cheque. True, it was that cheque that was returned with the endorsement "payments stopped by Drawer". Probably the ESI corporation might have been ill-advised to array the second accused in the case. He could not have been made liable for the cheque issued by the first accused. From the complaint and the materials now before the court, it is difficult to conclude that the liability of Purushothaman alone

was being discharged by A1 and he had no independent liability. It is not so. The definite stand of the Corporation is that both were independently and jointly liable. If that be so, the acquittal of A1 on the basis of Ext.D1 cannot be supported in law.

9. For the above reasons, while confirming the acquittal of the A2, the acquittal as against the first accused is set aside and the matter is remanded 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 **06.01.2016**. The court below may make every endeavour to dispose of the appeal as expeditiously as possible.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge