

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. 1557 of 2009 ()

**AGAINST THE JUDGMENT IN ST 796/2006 of JUDICIAL FIRST CLASS MAGISTRATE-
VIII, TRIVANDRUM DATED 9.6.2009**

APPELLANT(S)/COMPLAINANT:

**D.SURENDRAN, JAYASREE BHAVANAM,
NEHRU JUNCTION, KAZHAKUTTOM, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL**

RESPONDENT(S)/ACCUSED:

- 1. STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**
- 2. K.SASIDHARAN, VII/47, VSSC,
HOUSING COLONY, PALLITHURA, THIRUVANANTHAPURAM.**

**R2 BY ADV. SRI.T. RAJASEKHARAN NAIR
BY PUBLIC PROSECUTOR SMT. S. HYMA**

**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. 1557 of 2009

Dated this the 15th day of September, 2015

J U D G M E N T

Aggrieved by the dismissal of his complaint, the complainant before the court below has come up in appeal.

2. According to the complainant, the accused was in close acquaintance with the complainant and extended a sum of ₹50,000/- in discharge of which Ext.P1 cheque was issued. When the cheque on presentation was returned for want of funds and a notice sent to the accused, there was no response. Since the amount remained unpaid, complaint was laid.

3. Cognizance of the offence was taken by the Judicial First Class Magistrate Court-II, Thiruvananthapuram and after following the necessary procedures, summons was issued to the accused. On appearance of the accused and after completing the formalities, particulars of offence were read out to him for which he pleaded not guilty and claimed

to be tried. Complainant examined himself as PW1 and had marked Exts.P1 to P5.

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 also pointed out that the cheque is not signed by him. He however chose to adduce no evidence.

5. The court below was mainly impressed by two grounds namely; (1) the accused had disputed that he had signed the cheque. There was no proof from the side of the complainant that the accused had signed the cheque and (2) the cheque was dated 06.06.2005 and the complainant stated that the cheque was issued on the day on which the amount was received, that means according to the lower court, cheque should have borne the date 06.06.2005 itself. Holding that these two infirmities are sufficient to create a doubt about the debt claimed by the complainant, the

complaint was dismissed.

6. The learned counsel appearing for the appellant contended that both the grounds, which relied on by the court below, are unsustainable both on facts and in law. Only in the 313 statement, the accused had disputed his signature. There was no suggestion to PW1 when he was examined that the signature found on Ext.P1 cheque did not belong to the accused and that it was put by somebody else. Of course, regarding the entries in the cheque, there was question, but not regarding the signature on the cheque. So the conclusion drawn by the court that since the signature is disputed, the complainant was bound to prove the signature of the accused is also without basis.

7. Equally unsustainable is the second ground so says the counsel for the appellant. All that in the complaint and in the evidence, what PW1 has stated is that for discharge of debt, the accused issued a cheque dated 06.06.2005. It was not the case of the complainant that the

cheque was dated the same day on which the debt was incurred. It is only stated that the cheque was issued on that day. But there was no statement by the complainant that cheque was dated on the same day on which the amount was given. The court below wrongly assumed that PW1 had stated so. These two wrong assumptions led the court to pass the impugned order prejudicing the right of the complainant.

8. The learned counsel appearing for the respondent on the other hand contended that the court below has analyzed the evidence in considerable detail and has come to the conclusion that the debt is not proved. The complainant had no case that the cheque was a postdated cheque and that is what the court below has held. The learned counsel pointed out that the initial burden was the existence of a debt and also that the cheque was issued for discharge of debt to the complainant and that burden has not been discharged. In the light of the said fact, there are

no grounds to interfere with the findings of the court below.

9. After having heard the learned counsel on both sides and after having perused the records, it is difficult to sustain the order of the court below acquitting the accused. The two grounds relied on by the court below are as stated by the learned counsel for the appellant. As rightly pointed out by the learned counsel for the appellant, when PW1 was examined, there was no suggestion to him that the signature on the cheque was not put by the accused but it was by somebody else. In fact, a reading of the cross examination of PW1 would show that case of the accused seems to be that a blank signed cheque was given and all other particulars were filled up by the complainant. At any rate, there was no challenge to the signature found on the cheque. Therefore the basic assumption made by the court below that the signature had been disputed is not correct. Of course, this Court is not forgetting the fact that at the time of 313 statement, the accused came forward with the

statement that the signature in the cheque does not belong to him. But that is clearly an afterthought developed and up to the evidence of PW1 was over.

10. Equally sustainable is the second ground relied on by the court below. All that the complainant stated in the complainant as well as in his evidence was that to discharge a debt, the cheque dated 06.06.2005 was issued to him. There is nothing either in his evidence or in his complaint to show that cheque was dated the same day on which the transaction took place. Of course, the complainant in so many words has not stated that postdated was given to him. But it is clear from a reading of the evidence of PW1 that he was given a cheque on the day on which the money was received bearing a date 06.06.2005.

11. It could therefore be seen that the two grounds relied on which the complaint was dismissed are not sustainable both on facts and in law. It is felt that a reconsideration of the issue is necessary at the hands of the

court below. The court below has not properly appreciated the evidence on record and has jumped to certain conclusions which have no basis or foundation.

12. 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 disposal in accordance with law and in the light of what has been stated above.

The parties shall appear before the court below on **27.10.2015**. Both parties will be at liberty to adduce further evidence if they so choose. The court may make every endeavour to give priority to dispose of the case.

Sd/-
P.BHAVADASAN
JUDGE

ds

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P.A. to Judge