

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

CRL.A.No. 2111 of 2006

AGAINST THE JUDGMENT IN CC 11/2005 of JUDICIAL FIRST CLASS
MAGISTRATE COURT, KAYAMKULAM DATED 20-04-2006

APPELLANT/COMPLAINANT:

KRISHNA PANICKER,
NEPHEW OF GOVINDA PANICKER, G.P.BHAVANAM,
KOYIPPALLIKARAZHMA MURI, PERINGALA VILLAGE.

BY ADV. SRI.R.REJI

RESPONDENT/STATE AND ACCUSED:

1. STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.
2. THARISH,
S/O.SAINUDHEEN, PANAYIL VEEDU, KAKKANADU KARA,
KAKKANADU VILLAGE, KANAYANNUR TALUK.

R2 BY ADV. SRI.K.SHAJ
R1 BY SMT.S.HYMA, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
17-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P. BHAVADASAN, J.

Crl.Appeal. No.2111 of 2006

Dated this the 17th day of November, 2015.

JUDGMENT

Aggrieved by the acquittal of the accused of the offence under Section 138 of the Negotiable Instruments Act, the complainant before the court below has come up in appeal.

2. According to the complainant, in pursuance to an agreement between the parties, the accused issued Ext.P1 cheque for a sum of Rs.1,20,000/- which on presentation bounced on the ground that the account was closed. The statutory notice issued to the accused was returned with the endorsement 'addressee left'. As the amount remained unpaid, complaint was laid.

3. The court, before which complaint was laid, took cognizance of the offence. After following the necessary procedures, the court issued summons to the accused. On

appearance of the accused, copies of the documents were made available to the accused and particulars of the offence were read out to the accused. To the charge, the accused pleaded not guilty and claimed to be tried. The complainant therefore had P.W.1 examined and had Exts.P1 to P6 marked. After the close of the 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 he examined D.W.1 in his defence.

4. The court below found that there was a debt, in discharge of which Ext.P1 cheque was issued by the accused to the complainant and that all the facts which show that the cheque was issued to ward off the liability were present. However, the court below found that the copy of the notice produced by the complainant so also the copy of the postal receipt stand in the name of another person. Pointing out that

there is no proper notice issued, the complaint was dismissed and the accused was acquitted.

5. Learned counsel appearing for the appellant contended that true there is a mistake committed by the complainant, but that is not very material because the court below ought to have looked into the cover and found out that the address was proper. According to the learned counsel, the obligation on the part of the complainant to send notice in the address as is available or the last known address of the accused and he is not bound to go on searching the address of the accused. Having found that there is a liability on the part of the accused and cheque was issued in discharge of the same, the court ought not to have dismissed the complainant but ought to have given an opportunity to the complainant to adduce evidence. Learned counsel relied on the decision reported in C.C.Alavi Haji v. Palapetty Muhammed (2007(2)

KHC 932) wherein the Apex Court had observed that in case the accused had not received notice sent by post, the accused has opportunity to make the payment within 15 days of receipt of summons and wipe off the liability. At least that should have been resorted to by the accused. In that circumstance, learned counsel seeks for a reconsideration of the matter.

6. The court below did find that the cheque was issued by the accused and that it was in discharge of a cheque. However, the court below has found that the copy of the statutory notice alleged to have been sent to the accused is infact addressed to one Murali and not to the accused as such. Further, the court below also found that the receipt by which the registered cover was sent to the accused also addressed to one Murali and came to the conclusion that the notice was not proper.

7. It is significant to notice that the notice sent to the accused in his address was returned with the endorsement 'left'. One cannot omit to note that the address shown in the complaint is that shown in the statutory notice to the accused. The court found fault with the complainant for not opening the cover which was returned with the endorsement 'left'. It is not clear as to what prevented the court from resorting to such an exercise to ascertain whether the statutory notice was properly addressed.

8. Even though the lower court could not be found fault with in the sense that the notice and receipt produced were addressed to different persons, the court could take a responsibility to open the cover and find out the truth. Therefore, it is felt that an opportunity ought to be given to the complainant to establish the case.

In the result, the order of acquittal of the accused 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 trial court on 8.12.2015. Both parties will be at liberty to adduce further evidence in the case. The trial court shall make every endeavour to dispose of the matter as expeditiously as possible.

P. BHAVADASAN,
JUDGE

sb.