

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

CRL.A.No. 2278 of 2006

AGAINST THE JUDGMENT IN CC 310/2004 of JUDICIAL FIRST CLASS
MAGISTRATE COURT - III, THIRUVANANTHAPURAM DATED 15-06-2006

APPELLANT/COMPLAINANT:

M.BALAN,
S/O.KUNJIRAMAN, AGED 58 YEARS, 'ASWATHY',
NEAR CO-OPERATIVE BANK, OORALUNGAL, AMSHAM DESOM,
VADAKARA TALUK, EDACHERY.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS/ACCUSED NO.2 AND STATE:

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1. C.K.RADHA, D/O.MADHAVI AMMA,
"THARA", T.C.3/497, MUTTADA,
THIRUVANANTHAPURAM.
 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY SMT. LILLY LESLIE, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
24-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.2278 OF 2006

Dated this the 24th day of November, 2015.

J U D G M E N T

Two persons were sought to be prosecuted for the offence under Section 386 of Indian Penal Code. Among them, 1st accused absconded and the case as against him was split up and refiled as CC No.423/2006. The 2nd accused stood for trial and was acquitted.

2. The proceedings originated on a private complaint which was taken on file by the court concerned. The allegation was that there was an agreement for sale evidenced by Ext.P1 between the complainant and the 2nd accused in the presence of mediators. Even though agreement for sale was executed on 11.11.1998, amount was not paid and further agreement for sale on 01.10.1999 was also executed. 2nd accused executed a sale deed in favour of the complainant on 26.04.2000. The 2nd accused returned the cheque which was issued by the complainant as security. Thereafter, it is alleged that the

accused persons called the complainant out of his house under the pretext of discussing something personal. When the complainant came out of his house, 1st accused took a knife and threatened him that if he refused to return the cheque, he will be done away with. The complainant handed over the cheque to the accused and later the 2nd accused issued a lawyer's notice to the complainant demanding huge amount. Hence the complaint was laid.

3. Cognizance of the offence was taken by the court concerned and after following necessary procedures, summons was issued to the accused. The 1st accused entered appearance.

4. The complainant examined himself as PW1. He had also PWs 2 to 4 examined and Exts.P1 and P2 marked.

5. After the close of the complainant's evidence, 2nd accused was questioned under Section 313 Cr.P.C wherein she denied all the incriminating circumstances brought out in evidence against her. She stated that she is innocent.

6. Finding that the 2nd accused could not be acquitted under Section 232 Cr.P.C, she was asked to enter on her defence. She

chose to adduce no evidence.

7. The court below, on appreciation of evidence, found that there was absolutely no material as against the 2nd accused and acquitted her.

8. Assailing the acquittal, learned counsel appearing for the appellant contended that during examination of PW1, in order to mark a document of which only a photostat copy has been produced, court below refused to mark that document and thus committed a grave illegality. Relying on the decision in **Bipin Shantilal Panchal** vs. **State of Gujarat and another** (AIR 2001 Supreme Court 1158), it was contended that proper procedure ought to have been followed was to mark the document tentatively and take a decision on the admissibility at a later stage. By refusing to mark a document, the complainant has deprived of his opportunity to contest the matter on that basis. It is therefore contended that the complainant has to succeed on facts as against the 2nd accused.

9. The only evidence as against the 2nd accused is that the complainant found accused Nos.1 and 2 exchanging words. At

the time of examination, there is nothing attributed to 2nd accused other than the above fact. It is clear from the evidence of PW1 that 2nd accused could not have been a privy to the intimidation because the act of PW1 was a spontaneous one and not a pre arranged one. There is no case for the complainant that they had intimidated him or there was any conspiracy. Therefore, on facts, no grounds are made out to interfere with the findings of the court below.

10. Coming to the legal question raised by the learned counsel for the appellant, that is too without merit. The decision relied on by the learned counsel for the appellant was rendered in a context where question arose was that when an objection is taken to marking of a document whether it is absolutely necessary to clear the objection at that point of time itself and render a decision on admissibility. Noting the practical difficulty in doing so, the Apex Court observed that the document can be marked tentatively subject to admissibility at a later stage. That is only an enabling method and it cannot be the rule. The said decision was rendered in an entirely different context.

Admittedly, PW1 wanted to mark a photostat copy which is a secondary evidence. There was no case for PW1 that he had called upon to produce the same. Therefore, non marking of photostat copy of a document cannot be taken as a ground to set aside the acquittal.

For the above reasons, this Court finds no grounds to interfere with the acquittal of the 2nd accused by the court below.

This appeal is without merits and it is accordingly dismissed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.