IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

CRL.A.No. 482 of 2015 ()

AGAINST THE JUDGMENT IN CC 8/2009 of J.M.F.C.-I, CHERTHALA

APPELLANT(S)/COMPLAINANT:

SADANANDAN, (PARTNER KONNOTH JEWELLERY)
S/O MADHAVAN, KONNOTHVELI, CMC 19
CHERTHALA

BY ADVS.SRI.ANIL S.RAJ
SMT.K.N.RAJANI

RESPONDENT(S)/ACCUSED & STATE:

1.JOHNSON K.J
S/O. JOHN, KALAMBUKATTUCHIRA, CMC WARD NO. 2
CHERTHALA P.O, ALAPPUZHA -688524

2.STATE OF KERALA,
REPRESENTED BY THE DIRECTOR GENERAL OF PROSECUTION
ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 12-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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Crl.Appeal No.482 OF 2015

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Dated this the 12th day of August, 2015

<u>JUDGMENT</u>

This appeal is directed against the order of acquittal passed by the Court of Judicial First Class Magistrate-I, Cherthala in C.C.No.8 of 2009 in a prosecution for the offence punishable under section 138 of the Negotiable Instruments Act. The appellant herein was the complainant and the first respondent herein was the accused therein. The appellant filed a private complaint alleging commission of offence punishable under section 138, N.I Act against the first respondent. The case of the appellant was as hereunder:-

He was a partner of M/s.Konnoth Jewellery. For discharging a debt, the first respondent-accused requested him to lend ₹1,50,000/- and such request was made from the said jewellery, on 20.7.2008. Thereupon, he lent an amount of ₹1,50,000/- to the first respondent and in discharge of the same, the first respondent issued Ext.P1 cheque bearing No.736861 dated 28.7.2008. When the said cheque was presented for encashment it was dishonoured for the reason 'account closed'. Thereupon, the appellant issued a statutory notice intimating the first respondent regarding the dishonour of the cheque besides calling upon him to pay the amount due. Despite the receipt of notice the first respondent-accused did not effect payment of the amount within the statutory permitted period or even thereafter. On due process the first respondent appeared before the court. Particulars of the offence under section 138 N.I Act was then read over and explained to him and the first respondent pleaded not guilty. To prove the offence the appellant got himself examined as PW1 and got marked Exts.P1 to P7. After the closure of the evidence of the complainant/appellant, the first respondent was questioned under section 313 Cr.P.C and he denied all the incriminating circumstances put to him. He got himself examined as DW1. However, no documentary evidence was adduced in defence. After a careful evaluation of the evidence on record adduced by the appellant and the first respondent, the trial court found that the appellant had failed to prove the original transaction and also consideration in the cheque. He has also failed to prove the execution of the cheque. Consequently, it was found that Ext.P1 cheque could not be held as one issued for the discharge of a legally enforceable debt or liability towards the complainant and the first respondent/accused was found not guilty of the offence under section 138 N.I Act. Accordingly, he was acquitted under section 255(1) Cr.P.C. This appeal is filed in the said circumstances.

2. I have heard the learned counsel for the appellant and the learned Public Prosecutor. As noticed hereinbefore, to prove the offence against the first respondent the appellant got himself examined as PW1. The appellant deposed that on 20.7.2008 the first respondent came to Konnoth Jewellery and borrowed an amount of ₹1,50,000/- for the purpose of discharging his liability towards someone else. Further he deposed in tune with the pleadings in the

complaint. The case of the first respondent is that he did not borrow any amount as claimed by the appellant. Essentially, the precise case of the complainant is that he personally lent the aforementioned money to the accused. Though that was the precise case of the appellant herein, a scanning of the evidence on record consisting of the documentary evidence especially in Exts.P4 and P6 would belie the same. Going by the case of the appellant, consequent to the dishnour of Ext.P1 cheque and on receipt of Ext.P2 dishonour memo and Ext.P3 intimation, he caused issuance of Ext.P4 lawyer notice within the statutory time limit. Ext.P6 is an authorisation letter and Ext.P7 is the partnership deed in respect of the constitution of Konnoth Jewellery proved by PW1. Evidently, the learned Magistrate considered the question whether the case of the appellant could be believed or whether the case of the first respondent accused should be believed, based on Exts.P6 and P7. Ext.P7 would reveal that Konnoth Jewellery is a partnership firm and besides the complainant, his siblings Sri.Sasidharan and Sri.Presannakumar are also partners of the firm. Ext.P6 is an authorisation letter issued by the partners of the firm authorising Sadanandan, the appellant to conduct the case in respect of dishonour of the cheque bearing No.736861 dated 28.7.2008 viz., Ext.P1. The trial court in such circumstances considered Exts.P6 and P7 and in the light of the specifically pleaded case of the appellant and arrived at the conclusion that the case of the appellant that he had lent money in his individual capacity to the first respondent could not be believed. It was found that to prove the pleaded case of the appellant there was absolutely no necessity for him to produce Exts.P6 and P7. Furthermore, it was found that the production of Exts.P6 and P7 would be sufficient to cast serious doubt regarding the transaction and execution of the cheque. It was also found that the defence case set up by the first respondent appeared to be probable and the appellant had proved by preponderance of probabilities how the cheque reached the hands of the appellant. It was consequent to that the learned Magistrate arrived at the conclusion that the appellant had failed to prove the original transaction and also that he would not be entitled to get the benefit of the presumptions under sections 139 and 118 of the N.I Act. It was found that Ext.P1 could not be issued for the discharge of legally enforceable debt or liability. I am of the view that certain other aspects discernible from the records produced by the appellant-complainant also would undoubtedly reveal that the case of the appellant advanced through the complaint and also through his deposition cannot be sustained and in fact, they would virtually reveal that the complaint itself was not filed adhering to the statutory mandate. Ext.P4 is the lawyer notice dated 31.7.2008 issued to the first respondent immediately after the receipt of the intimation regarding the return of Ext.P1 cheque as unpaid. In other words, Ext.P4 is a demand made in writing in tune with the provisions under section 138(b) of the N.I Act pursuant to the dishonour of Ext.P1 cheque bearing No.736861 dated 20.7.2008.

3.In Ext.P4, it is specifically stated that the reason for issuance of the said notice is the return of the cheque bearing No.736861 for an amount of ₹1,50,000/- dated 20.7.2008 which was presented for encashment in the Cherthala Branch of Federal Bank. Ext.P4 was proved by the appellant himself. Ext.P4 would reveal that it was issued for M/s.Konnoth Jewellery on the instructions given by the complainant herein in his capacity as partner of Konnoth Jewellery. In other words, it is evident from Ext.P4 that the said notice was issued on behalf of Konnoth Jewellery. Thus it is obvious from the said notice itself that the cheque in question was issued in respect of a transaction with Konnoth Jewellery and the notice was issued on behalf of jewellery and not in the individual capacity of Sadanandan whereas it was issued only in his capacity as one of the partners of Konnoth Jewellery. In such circumstances, Exts.P6 and P7 also have to be looked into. Ext.P7 would reveal that Konnoth Jewellery is a partnership firm and besides Sadanandan, the appellant, his siblings Sri. Sasidharan, and Sri.Presannakumar are also its partners. Ext.P6 is a letter issued in his favour by the partners of the said firm. The astonishing as also disgusting part is that it was addressed to the presiding officer of the court. Whatever be that, it is evident from Ext.P6 that it authorised Sadanandan who is one of the partners of the firm by all the partners, to conduct the case against the first respondent in respect of cheque bearing No.736861 drawn on Federal Bank Ltd viz., Ext.P1. When that be the circumstances, I am of the view that the case of the appellant that the amount was lent by him in his individual capacity cannot be believed and in fact, those documents would belie his contention. In such circumstances, another question would also pose for consideration as to whether the complaint itself was maintainable. The term 'company' has been defined for the purpose of section 141 of the N.I Act and going by the same, company means any body corporate and includes a firm or other association of individuals. If it was not a cheque issued to discharge a debt towards the firm, according to the appellant and the other partners, there was no necessity to issue Ext.P6. Ext.P7 reveals the constitution of the firm. But, the complaint was not filed by the appellant herein in his capacity as the partner of the firm based on any authorisation. It was in fact, filed in his individual capacity and the averments thereon also made in that manner. Thus, taking into account all such aspects revealed from the evidence on record, I am of the view that there is absolutely no scope for invoking the appellate jurisdiction to interfere with the impugned judgment.

In the result, this appeal has to fail and accordingly, it is dismissed.

C.T. RAVIKUMAR
(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010