

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

CRL.A.No. 2487 of 2006

AGAINST THE JUDGMENT IN CC 2/2006 of JUDICIAL FIRST CLASS
MAGISTRATE, PAYYOLI DATED 27-07-2006

APPELLANT/COMPLAINANT:

SREEKOVIL CHITS CO. PVT. LTD.,
NEELIKANDY BUILDING, KALPETTA.

BY ADV. SRI.N.L.KRISHNAMOORTHY

RESPONDENT/ACCUSED:

1. JOSEPH T.V., S/O.VARKI THERENA,
MENON MUKKU, VATUVANCHAL P.O., WAYNAD.
2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM (FORMAL PARTY).

R1 BY ADV. SRI.V.SHYAM

R2 BY SMT. S. HYMA, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
13-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.2487 OF 2006

Dated this the 13th day of October, 2015.

J U D G M E N T

The accused who was prosecuted for the offence under Section 138 of the Negotiable Instruments Act was acquitted of the offence on the ground that the complaint has been filed out of time.

2. The complainant-company is conducting chitty business and the accused was a subscriber to one of the chitties run by the company. He defaulted in payment of instalments and when money was demanded by the company, he issued a cheque for the amount due which, on presentation, bounced for want of funds. Statutory notice issued to the accused within the time stipulated failed to invoke any response. Therefore, the complaint was laid.

3. Cognizance of the offence was taken by the court before which complaint was laid. After following necessary formalities, summons was issued to the accused. On appearance of the

accused, particulars of offence were read out to him, to which, he pleaded not guilty and claimed to be tried. The complainant was examined as PW1 and Exts.P1 to P8 marked.

4. After the close of the complainant's evidence, accused was questioned under Section 313 Cr.P.C wherein he denied all the incriminating circumstances brought out in evidence against him and maintained that he is innocent. He however chose to adduce no evidence.

5. On appreciation of the material before it, even though the court below found that the cheque was issued to discharge the debt due to the company, since the complaint was filed out of time, the accused was acquitted.

6. Assailing the acquittal, learned counsel appearing for the appellant contended that even assuming that there is delay of one day in filing the complaint, an opportunity ought to have been given to the complainant to seek condonation of delay in view of Section 142 of Negotiable Instruments Act. Even otherwise learned counsel pointed out that under Section 473 of Code of Criminal Procedure, court could have, after putting the

accused on notice, condoned the delay. The court below, according to the learned counsel, acquitted the accused on this ground and that had caused considerable loss and prejudice to the complainant.

7. There seems to be considerable force in the above submission. Section 142 of Negotiable Instruments Act as amended by Act 55 of 2002 provides a provision to condone delay in filing the complaint after the statutory date is over. That is clear from the proviso to Section 142(b).

8. In the case on hand, issuance of cheque is not in dispute. The court below, on appreciation of evidence, found that the accused was not successful in rebutting the presumption under Section 139 of Negotiable Instruments Act and therefore the offence is made out. However, the court below found that the complainant had received dishonour memo on 19.09.2005 and Ext.P6 indicated that notice was received by the accused on 21.10.2005. The accused gets 15 days time there from to make the payment and if payment is not made after receipt of notice, accused has 30 days time therefrom to file a complaint. The

proviso to Section 142(b) says that if there is any delay i.e. the complaint is filed beyond 30 days, the accused has an option to seek condonation of delay by filing appropriate petition.

9. Learned counsel appearing for the appellant is fully justified in his submission that assuming that there is delay of one day in filing the complaint, an opportunity ought to have been given to the complainant to seek condonation of delay by filing appropriate application. Acquittal of the accused without providing such an opportunity cannot be sustained in law. Learned counsel appearing for the appellant relied on Section 473 of Code of Criminal Procedure also.

10. In the above facts and circumstances of the case, it is felt that the court below ought to have given an opportunity to the complainant to take recourse to the proviso to Section 142(b) of Negotiable Instruments Act and seek condonation of delay in filing the complaint. The acquittal of the accused without providing such an opportunity is unjustified and unmerited. Had the complainant failed to issue statutory notice in time and had he refused to file a petition, there would have been some

substance in the acquittal. He was not put on guard regarding delay.

For the above reasons, this appeal is allowed. The judgment of the court below 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 court below may also consider the applicability of Section 473 Cr.P.C. The parties will appear before the court below on 09.11.2015. The parties will be at liberty to adduce further evidence if they so chose.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

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P.A to Judge.