

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.2492 of 2006 (D)

AGAINST THE JUDGMENT IN CC 30/2006 of JUDICIAL FIRST CLASS
MAGISTRATE COURT-III, KOTTARAKAKARA DATED 03-11-2006

APPELLANT/COMPLAINANT:

C.M.BABY, S/O.CHANDA PILLAI,
POIKAYIL HOUSE, ODANAVATTOM MURI, ODANAVATTOM VILLAGE,
KOLLAM DISTRICT.

BY ADV. SRI.B.MOHANLAL

RESPONDENTS/ACCUSED & STATE:

1. SUGATHAN, KEEZHEMAVARATHALA HOUSE,
BALARAMAPURAM P.O., THIRUVANANTHAPURAM.
2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.ALEXANDER GEORGE

R2 BY SRI. C.K. JAYAKUMAR, 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.2492 OF 2006

Dated this the 13th day of October, 2015.

J U D G M E N T

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

2. The complainant runs a jewellery shop. According to him, wife and the sister of accused are regular customers of the jewellery. Therefore, when the accused approached him, he sold gold ornaments worth Rs.3,97,889/- weighing 807gm and 710 mg. Rs.1 lakh was repaid by the accused on two occasions and for the balance amount, Ext.P1 cheque was issued. The cheque, on presentation, bounced for want of funds and Ext.P3 notice was issued which was received by the accused. He did not respond to the notice and since the amount remained unpaid, complaint was laid.

3. The court before which complaint was filed took cognizance of the offence and after completing the formalities,

summons was issued to the accused. On appearance of the accused particulars of the offence were read out to him, to which, he pleaded not guilty and claimed to be tried.

4. The complainant examined himself as PW1 and had Exts.P1 to P5 marked.

5. 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. His stand was that the amount due to the jewellery shop having been paid and no amount is due to the complainant. He chose to adduce no evidence.

6. The court below, on the basis that no documents have been produced by the complainant to show that any gold ornaments were sold to the accused as alleged in the complaint and also on the ground that there is no evidence to show that payments were made as claimed by the complainant, came to the conclusion that the offence has not been established and acquitted the accused.

7. Assailing the acquittal, learned counsel appearing for the

appellant contended that the court below has not applied its mind to the statement given by the accused. It is pointed out that at the time of cross examination of PW1, the entire attempt was to show that the accused had no relationship with the complainant and that the accused had not purchased any gold ornaments from the complainant and that no amount was due from him and also that the accused had not issued Ext.P1 cheque. But, at the time of questioning under Section 313 Cr.P.C, according to the learned counsel, the accused had given an entirely different case that he had paid the amount due to the jewellery shop. This vital admission has been omitted to be taken note of by the court below.

8. Learned counsel appearing for the respondent-accused pointed out that a statement made under Section 313 Cr.P.C cannot be treated as evidence and that cannot be relied on. The complainant has not produced any document to show that the accused had purchased the gold ornaments as claimed by the complainant. The court below has considered all the matters in detail and has concluded that the offence is not made out. It is

pointed out that no interference is called for in the findings of the court below.

9. The solitary evidence in the case is furnished by PW1 who is conducting a jewellery shop. He has spoken to about the purchase made by the accused. PW1 has stated that the wife and sister of the accused were regular customers and on that belief, he had sold gold ornaments for Rs.3,97,889/-. It is stated that Rs.1 lakh was paid on two occasions and Rs.50,000/- was paid from the house of the accused. He then says that for the balance amount, Ext.P1 cheque was issued which, on presentation, bounced for want of funds.

10. That the cheque bounced for want of funds is not in dispute. It is seen that statutory notice was issued to the accused which was received by him. But the accused did not respond to the same. The accused had a case that he had not purchased gold ornaments from the complainant. But, as rightly pointed out by the learned counsel for the appellant, the stand taken by the accused at the time of being questioned under Section 313 Cr.P.C is entirely different. At the time of

questioning under Section 313 Cr.P.C, after denying all the incriminating circumstances, it is stated that the amount has been paid and no amount is due to the complainant. The above stand taken by the accused is totally inconsistent with the case set up by the cross examination of PW1. That means the accused has no consistent case. This aspect of the case has been lost sight of by the court below. At any rate, it is felt that a re-look at the issue is absolutely necessary in the interest of justice.

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 parties shall appear before the trial court on 11.11.2015. The parties are at liberty to adduce further evidence if they so chose.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True Copy //

P.A to Judge.