

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

CRL.A.No. 1676 of 2008 (D)

**AGAINST THE ORDER/JUDGMENT IN CC 377/2002 of J.M.F.C.-I, MAVELIKKARA DATED
11-07-2005**

**AGAINST THE ORDER/JUDGMENT IN Cri.L.P. 876/2008 of HIGH COURT OF KERALA
DATED 31-07-2008**

APPELLANT/COMPLAINANT IN C.C. 377/02:

**SHIFA HIRE PURCHASE LTD,
MAVELIKKARA, REP.BY ITS RECOVERY OFFICER, B.SURESH.**

BY ADV. SRI.P.P.JACOB

RESPONDENTS/ACCUSED:

- 1. SAM VARGHESE,NADUVALLIL HOUSE,
PUNUMOODU, MAVELIKKARA.**
 - 2. STATE OF KERALA REP.BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.**
- R1 BY ADV. SRI.E.RAFEEK
R1 BY ADV. SMT.HUMERA MOHAMED ALI
R1 BY ADV. SRI.GOKUL DAS V.V.H.
R2 BY ADV. PUBLIC PROSECUTOR, SRI. GITHESH. R**

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 11-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

DST

K.ABRAHAM MATHEW, J.

.....
CRL.A. No.1676 of 2008
.....

Dated this the 11th day of March, 2015

J U D G M E N T

The appellant company was the complainant and the 1st respondent the accused in C.C. 377/2002 on the file of the Judicial First Class Magistrate, Mavelikkara. The complaint was instituted on the allegation that to repay the loan the 1st respondent had taken from the appellant company he issued a cheque bearing date 20.08.2001 for Rs.1,11,075(Rupees one lakh eleven thousand and seventy five only) and it was returned dishonoured by the bank for want of sufficient fund in his account and in spite of demand by notice he failed to pay the amount and he thus committed the offence u/s. 138 of the NI Act. The learned Magistrate found that the person who filed the complaint had no authority to do so and the dispute is of a civil nature and it does not attract S. 138 of the NI Act and accordingly, she acquitted the 1st respondent.

2) The appellant is a limited Company. Learned Magistrate entered a finding that there was no resolution of the board of directors authorising the person who filed the complaint (PW1) to institute legal proceedings.

3) The transaction alleged in the complaint is a loan transaction.

It is very strange that the amount or the date of loan is not mentioned either in the complaint or in the examination-in-chief of PW1. So also the date on which Ext. P2 cheque was issued by the 1st respondent also does not find a place either in the complaint or in the examination-in-chief. This itself makes the appellant's case doubtful as observed by the Supreme Court in ***Vijaya v. Laxman & Anr. (2013(3)SCC 86)***.

4) For the first time it was in the cross-examination of PW1 it was disclosed that the cheque was issued in connection with the purchase of a Matador van. He deposed that the 1st respondent borrowed Rs.1,02,000(Rupees one lakh two thousand only) on 29.08.1998 to purchase the vehicle. He said that it was on the security of RC book the loan was given. When he was further questioned, he said that only a copy of the RC book was given as security. He would like the court to believe that there was a hire purchase agreement. But he does not know its terms. The agreement is not produced before the court. When he was asked about the omission in the complaint and in the examination-in-chief to mention the particulars of the transaction, he had no explanation.

5)In the cross-examination, the definite case of PW1 was that the 1st respondent filled up and signed the cheque in his presence. According to him it was written in the same ink. But he admitted that Ext.P2 cheque is not written in the same ink or in the same

handwriting. Realising the effect of it he stated that the 1st respondent brought a filled up cheque. In no unequivocal terms he admitted that his earlier statement was false. He said that he was fully aware that to give false evidence is an offence.

6) It dropped from PW1 that the 1st respondent agreed to pay interest at 18% per annum and after deducting the amounts paid by him. He was liable to pay Rs.1,11,317/-(Rupees one lakh eleven thousand three hundred and seventeen only) which included the principal amount and its interest. He had no doubt that if that is not the amount mentioned in Ext.P2 cheque it was not issued by the 1st respondent. The amount shown in Ext.P2 cheque is Rs.1,11,075 (Rupees one lakh eleven thousand and seventy five only). When this was brought to his notice, he said that his earlier statement was a mistake.

7) When PW1 was asked whether the appellant had taken possession of the vehicle he denied it. But subsequently he was compelled to admit that the appellant took possession of the vehicle and sold it.

8) The cross-examination of PW1 shows that every statement of this witness is false. He is an unreliable witness. The appellant company has failed to prove execution of the cheque or that any amount was due to it from the 1st respondent. Though the learned

Magistrate has not discussed the evidence mentioned above, I have no doubt that the allegation against the 1st respondent is not at all true and the order of acquittal passed by the learned Magistrate is legal. No interference is called for.

In the result, this appeal is dismissed.

Sd/-
K.ABRAHAM MATHEW,
JUDGE

DST/11/03/15

/True Copy/

P.A. to Judge