

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 15TH DAY OF SEPTEMBER 2015/24TH BHADRA, 1937

CRL.A.No.2079 of 2009 (D)

AGAINST THE JUDGMENT IN ST 6/2008 of JUDICIAL FIRST CLASS
MAGISTRATE COURT-III, KOLLAM DATED 02.07.2009

APPELLANT/COMPLAINANT:

M/S.TRANSWORLD CREDIT AND INVESTMENT CO.PVT.LTD.,
A COMPANY REGISTERED UNDER THE INDIAN COMPANIES ACT
HAVING ITS REGISTERD OFFICE AT TRANSWORLD TOWERS,
BUSINESS LANE, BEACH ROAD, KOLLAM, REPRESENTED BY ITS
ADMINISTRATIVE OFFICER G. RAVEENDRAN PILLAI,
S/O.JANARDHANAN PILLAI, AGED 53 YEARS, RESIDING AT
KOTHETHUKULANGARA, ULIYAKOVIL, KOLLAM.

REG. OFF. AT TRANSWORLD TOWERS, BUSINESS LANE, BEACH
ROAD, KOLLAM, REP.BY ITS ADMN.OFFICER
G.RAVEENDRAN, PILLAI, S/O.JANARDHA

BY ADV.SRI.M.T.SURESHKUMAR

RESPONDENTS/ACCUSED AND STATE:

1. SASIKALA DEVI.R.
DWAAKA, SAKTHIKULANGARA, KOLLAM.
2. STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR, ERNAKULAM.

R1 BY ADV. SRI.R.MANOJ
R2 BY SMT.S.HYMA, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
15-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.BHAVADASAN, J.

Crl. Appeal No.2079 OF 2009

Dated this the 15th day of September, 2015.

J U D G M E N T

Aggrieved by the order of acquittal passed by the court below dated 02.07.2009 in S.T.No.6/2008 whereby the court found that for want of original of cheque namely, Ext.P3 complainant could not succeed.

2. According to the complainant, in order to discharge a debt due to him, a cheque was issued, photostat copy of which was produced by the complainant, which, on presentation, was bounced for want of funds. Notice issued to the accused invoked no response. Since the amount remained unpaid, complaint was laid. In the complaint, it was mentioned that the original of the cheque had been lost.

3. Cognizance of the offence was taken and on appearance of the accused, after following necessary formalities, particulars of offence were read out to her. She pleaded not guilty and

claimed to be tried.

4. The complainant had therefore PW1 examined and Exts.P1 to P8 marked.

5. After the close of the complainant's evidence, accused was questioned under Section 313 Cr.P.C. The defence adduced no evidence.

6. The court below finding that only photostat copy of the cheque is made available and there is possibility of manipulations and concoctions and therefore holding that it cannot be accepted, dismissed the complaint.

7. Assailing the finding of the court below and relying on the decision in **Chitaranjan** vs. **Jayarajan** (2005 (1) KLT 790), learned counsel appearing for the appellant contended that the court below was obliged to consider the matter on merits and could not have dismissed the complaint on the sole ground that the original of the cheque was not produced. Several documents have been produced to show that there was transaction between the parties and cheque bounced for want of funds. Even assuming that cheque is lost, the liability does not cease to exist.

Learned counsel went on to point out that at any rate the court below ought to have considered the matter on merits instead of dismissing the complaint on the sole ground that original of the cheque was not produced.

8. Learned counsel appearing for the contesting respondent, on the other hand, pointed out that the court below was of the opinion that unless original of the cheque is produced, authenticity of the document could not be ascertained. There may be circumstances when original cheque is lost and even a photostat copy may not be available. That does not mean that there is no liability and offence committed. It all depends on the facts and circumstances of the case.

9. In the case on hand, the complainant has been examined as PW1 and he has marked Exts.P1 to P8. The mere fact that cheque is lost is not a ground to non suit the complainant if there are other materials to show that liability existed, for the discharge of which Ext.P3 was issued. One fails to understand the finding of the court below that unless original of the cheque is produced, due execution cannot be proved. It

does not stand to reason at all. Unless it is shown that photostat copy is a concocted document, it cannot be said that there is no due execution. Whether the photostat copy can be used as secondary evidence or not is a different question. At any rate, the grounds for dismissal are not justified.

10. Even more baffling is the finding that there is no independent evidence to show that the cheque has been dishonoured. Ext.P4 is the dishonour memo, Ext.P5 is debit memo and Ext.P6 is copy of lawyer notice. The above documents have not been adverted to by the court below. The court below has not applied its mind to the facts of the case and that has resulted in grave injustice in the matter.

For the above reasons, the impugned order is set aside and the matter is remanded to the trial court for fresh consideration in accordance with law and in the light of what has been stated above. If any authority is required in the matter, that is furnished in the decision in **Chitaranjan** vs. **Jayarajan** (2005 (1) KLT 790). The court below shall retry the matter. The parties shall appear before the court below on 27.10.2015. The

court below may make every endeavour to dispose of the matter as expeditiously as possible untrammelled by the observations made by this Court in disposing of this appeal. Parties are at liberty to adduce further evidence.

Sd/-

**P.BHAVADASAN
JUDGE**

smp

// True copy //

P.A to Judge.