

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 9TH DAY OF DECEMBER 2015/18TH AGRAHAYANA, 1937

CRL.A.No. 33 of 2011 ()

(AGAINST THE ORDER/JUDGMENT IN CrI.L.P. 1150/2010 of HIGH COURT OF KERALA DATED 08-12-2010 AGAINST THE ORDER/JUDGMENT IN CC 2387/2009 OF J.M.F.C., IRINJALAKUDA DATED 14-07-2010)

APPELLANT(S)/PETITIONER/COMPLAINANT:

PAULSON, S/O.ANTONY,
KURUTHUKULAM HOUSE, KATTUR DESOM, KARALAM
THRISSUR DISTRICT.

BY ADVS.SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH

RESPONDENT(S)/ACCUSED AND STATE:

1. MANIKANDAN, S/O.VELAYUDHAN,
MOOVASSERY, WEST KOMBARA, MANAVALASSERY
MUKUNDAPURAM TALUK, THRISSUR DISTRICT-680 001.

2. STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R,R1 BY ADV. SRI.NAGARAJ NARAYANAN
R,R1 BY ADV. SRI.SAIJO HASSAN
R,R1 BY ADV. SRI.RAFEEK. V.K.
R,R1 BY ADV. SRI.BENOJ C AUGUSTIN
R,R1 BY ADV. SRI.PRATHAP PILLAI
R,R1 BY ADV. SMT.J.KASTHURI
BY PUBLIC PROSECUTOR SRI.ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27-11-2015,
THE COURT ON 9/12/2015 DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

Crl.A. No. 33 of 2011

Dated this the 9th day of December, 2015

JUDGMENT

This appeal arises from the judgment in C.C.No.2387/2009 of the Judicial First Class Magistrate Court, Irinjalakuda.

2. The appellant laid a complaint invoking Section 138 of the Negotiable Instruments Act alleging that the accused had borrowed a sum of Rs.75,000/- from him and towards the discharge of that debt, a cheque was issued which was returned dishonoured on the ground of insufficiency of fund. A statutory notice was issued which was neither replied nor the amount paid. The accused appeared before the court below and pleaded not guilty. On the side of the complainant he was examined as PW1 and Exts.P1 to P6 were marked. On the side of the accused, he was examined as DW1 and Exts.D1 to D4 were marked. The court below, on an evaluation of the available materials, concluded that the complainant had failed to prove the due execution of the cheque. Consequently, the

accused was acquitted.

3. This is under challenge in this appeal. Heard both sides and examined the records.

4. The complainant has given evidence as PW1 in accordance with his complaint. The defence set up by the accused was one of total denial and that he did not have any transaction with the complainant. According to him, he had availed a loan of Rs. 5,000/- from one Baburaj who was the managing partner of one Badram Hire purchase. At the time of availing the loan of Rs.5,000/-, a blank signed cheque and a promissory note were delivered. According to the accused, this blank signed cheque was handed over by Baburaj to the complainant, who was a partner of that firm.

5. This suggestion was put to PW1 in his cross examination. He denied the suggestion. He asserted that he was not a partner of the above firm and that Baburaj was not known to him. The court below held that the evidence of PW1 was not inspiring and that there were materials to show that the complainant had no previous acquaintance with the accused. It was also held that notice, sent by the complainant in a wrong address of the

accused, also indicated that the accused was not known to the complainant. It was further held that the entire in Ext.P1 Cheque differed from the signature portion on the cheque and thereby, there were reasons to believe that the blank signed cheque was subsequently filled up.

6. To substantiate the contention of the accused that the statutory notice was sent in a wrong address, he relied on Exts.D2 to D4. Ext.D2 was a ration card, Ext.D3 was a letter issued by the Municipality and Ext.D4 was a notice issued by the complainant to the accused. Exts.D2 and D3 indicated that the accused was residing with his mother in an address which was slightly different from that of address shown in the complaint. Ext.D4 also supported this. However, Ext.D4 indicates that the notice was sent in the address shown in the complaint, that it was redirected and was delivered to the accused. However, the address shown in Ext.D2 to Ext.D4 indicates that the name of the house remained same and there was no substantial difference in the address of the accused. However, the notice was served on him in that address.

7. The finding of the court below, that the complainant did

not have a past acquaintance with the accused, is not sustainable for more reasons than one. As mentioned above, the address of the accused was substantially the same. According to the accused, complainant was a partner of Badram Hire Purchase and his own version indicates that he knew the complainant also. Further PW1 in his evidence has deposed that he was known to the accused for the past 10 years. This has not been seriously cross examined.

8. Another reasoning of the court below was that there was a difference in the entries on Ext.P1 cheque with that of the signature portion. It is true that PW1 in his evidence had deposed that the signature and the other entries were entered with the same ink. It is true that a close perusal of the entries in Ext.P1 may indicate that there is slight difference in the signature from that of the other entries. However, that by itself is not crucial, unless it is established by definite cogent evidence.

9. Version of PW1 appears to be consistent regarding the execution of Ext.P1. The specific allegation of the accused that the complainant was the partner of Badram Hire Purchase was

strongly denied by him. There is absolutely no evidence to show that he was a partner of the above hire purchase firm. The said Baburaj was also not examined to prove that towards the discharge of a transaction with him, a blank signed cheque was delivered to Baburaj by the accused. There is no reason suggested as to why the said Baburaj should deliver the blank signed cheque to the complainant and to initiate false proceedings.

10. On the other hand, it has to be noted that there is absolutely no evidence on the part of the accused to prove his defence. He has also not replied to the statutory notice. An evaluation of the entire evidence leads to a conclusion that PW1 has succeeded in proving the due execution of the cheque by reliable, cogent and consistent evidence. The statutory presumptions arising there from can be taken advantage of by the complainant. The accused has not succeeded in rebutting the statutory presumptions. In the above circumstances, the finding of the court below, that the complainant failed to prove the case, is not legally sustainable and is liable to be set aside. The evidence prove that accused has committed an offence

punishable under Section 138 of the Negotiable Instruments Act and is liable to be convicted.

11. Considering the fact that the finding of the court below is being reversed at the appellate stage, a substantive sentence of imprisonment till raising of the court with a direction to the accused to pay a compensation of Rs.75,000/- to the complainant, failing which, he shall undergo SI for two months will satisfy the interest of justice. The accused is granted two months time to pay the compensation.

In the result, the appeal is allowed. The impugned judgment is set aside and the accused is convicted for offence punishable under Section 138 of the Negotiable Instruments Act. He is sentenced to undergo imprisonment till raising of the court and to pay a compensation of Rs. 75000/-(Rupees Seventy Five Thousand only) to the complainant within two months from today, failing which he shall undergo SI for two months. He shall appear before the court below within one month from today to undergo substantive sentence. If the accused fail to do so, the court shall take such steps. If the compensation is not paid within two months, after expiry of two months granted for

remitting the compensation, court shall initiate appropriate steps for enforcing the default sentence.

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge

