

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

CRL.A.No. 37 of 2011 ()

AGAINST THE JUDGMENT IN CC 12/2010 of JUDICIAL FIRST CLASS MAGISTRATE
COURT - I, KALPETTA DATED 20.10.2010

AGAINST THE ORDER IN CrI.L.P. 1169/2010 of HIGH COURT OF KERALA DATED
09.12.2010

APPELLANT/COMPLAINANT:

VIJAYAN.M.K., AGED 40 YEARS,
S/O.UNNI NAIR, KARTHIKA NIVAS, KUNNAMBETTA P.O.
MEPPADI, WAYANAD DISTRICT.

BY ADV. SMT.CELINE JOSEPH

RESPONDENTS/ACCUSED & STATE:

1. NIKHITH CHANDRAN, S/O.CHANDRAN,
CHENKUTTY HOUSE, PUTHURVAYAL P.O., KALPETTA
WAYANAD DISTRICT-673 121

2. STATE OF KERALA, S.I.OF POLICE,
KAMBALAKKAD, REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.P.K.RAVISANKAR
BY PUBLIC PROSECUTOR: SRI ABHIJITH LESLIE

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

=====

Crl.A.No.37 of 2011

=====

Dated this the 26th day of November, 2015

JUDGMENT

This appeal arises from the judgment of the Judicial First Class Magistrate, Kalpetta in C.C.No.12 of 2010.

2. The complainant alleged that accused owed a sum of Rs.35,000/- to the complainant and towards the discharge of that liability, executed a cheque. It was presented for collection but was returned dishonoured on ground of insufficiency of funds. A notice was issued which was acknowledged by the accused, which was neither replied nor the amount paid. Hence, a complaint was filed alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act.

3. Before the court below, the accused appeared and contested the proceedings. On the side of the complainant, PW1 was examined and Exts.P1 to P5 were marked. On the side of the accused, DW1 was examined and Exts.D1 to D3 were marked. Court below, on an evaluation of all inputs concluded that the complainant failed to prove the due execution of the cheque and the existence of a legally enforceable debt. Consequently,

complaint was dismissed and the accused was acquitted. This is assailed in this appeal.

4. Heard both sides and examined the records.

5. Essentially, the allegation against the accused is sought to be proved through the oral testimony of PW1. In the complaint, the genesis and the exact nature of the transaction and the consequential liability were not mentioned. However, there is no dispute that the cheque was returned dishonoured as evidenced by Ext.P2 and service of notice was proved by Exts.P3 to P5 documents.

6. The defence set up by the accused was that of a case of total denial. It was contended that the cheque was handed over to one Raveendran who was the paternal uncle of the accused. He did not disclose as to how the cheque reached the hands of the complainant. To fasten the liability on the accused, it has to be proved that towards the due discharge of an existing liability, the cheque was issued by the accused. The precise liability as revealed in the affidavit in lieu of chief examination was that the accused and the complainant were known to each other for more than 10 years and that the accused had promised to sell some trees

to the complainant, for which, he had obtained a sum of Rs.35,000/- as advance. Subsequently, accused withdrew from the deal and towards the discharge of that liability, Ext.P1 cheque was issued. The trend of cross examination in the line of the above defence also indicates that the complainant struck to his specific case that there was a transaction between the complainant and accused in relation to the sale of certain trees.

7. To demolish this, the Police Constable attached to Meppadi Police Station was summoned and examined as DW1. Through him, the petition register was marked as Ext.D1. It related to Ext.D2 complaint dated 24.03.2009. That complaint was submitted by the de facto complainant herein wherein, he specifically alleged that there was an agreement for purchase of trees standing in the property of one Raveendran for a sum of Rs.1,00,000/-. According to him, an advance of Rs.35,000/- was paid to Raveendran and some of the trees were cut down. There was an enquiry on the basis of the above complaint, evidenced by Ext.D3. The specific allegation in the above complaint was that the complainant had direct transaction with Raveendran. DW1 in his evidence had no case, not even a suggestion in the cross

examination of DW1, that this was related to a different transaction than from the transaction covered by Ext.P1. The complainant did not have a case that apart from Ext.P1 transaction, he had any other transaction with the accused. This narrows down the issue to the point that both the transactions covered by Ext.P1 as well as Ext.D1 are one and the same. An appreciation of these facts clearly show that the complainant had taken a totally different stand in the complaint. In Ext.D1, his allegation was against the uncle and he asserted that he had paid money to the uncle of the accused. On the other hand, in the complaint, his specific case was that he had a transaction directly with the accused. He had no case in the complaint that the uncle was involved in that transaction. He also had no case that in the alleged transaction covered by Ext.D1 between himself and the uncle, the accused was directly or indirectly involved. In other words, the basic premise on which the liability was set up in relation to Ext.P1 was diametrically different from the complaint in Ext.D1.

8. In the above circumstances, notwithstanding the fact that the accused had admitted his signature, that there was no

reply and even that, he did not have a very consistent case throughout cross examination, I am inclined to hold that the complainant did not succeed in proving the existence of a legally enforceable debt with the accused and that the cheque was issued towards the discharge of that liability. I find no reason to take a different view from the view arrived at by the court below in appreciation of evidence. Though a request was also made by the learned counsel for the complainant for a remand, I am not inclined to grant it, since neither party had a case that they did not get sufficient opportunity to adduce evidence. Further, no amount of evidence of complainant is likely to fill up the basic weakness of the case of the complainant.

In the result, the appeal fails and it is dismissed.

Sd/-

SUNIL THOMAS
Judge

Sbna

True Copy /

P.A to Judge