

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

CRL.A.No. 87 of 2011 (A)

AGAINST THE ORDER IN Cr1.L.P. 11/2011 of HIGH COURT OF KERALA DATED
06-01-2011

AGAINST THE JUDGMENT IN CRA 331/2007 of I ADDL. DISTRICT COURT-1,
TRIVANDRUM DATED 31.07.2010

APPELLANT/RESPONDENT/COMPLAINANT:

M/S.UNIVERSAL TOURS AND TRAVELS
PARTNERSHIP FIRM HAVING ITS PRINCIPAL PLACE OF
BUSINESS AT CHILD WELFARE COMPLEX(L.M.S.COMPOUND)
THIRUVANANTHAPURAM REPRESENTED BY ITS MANAGING PARTNER
MATHEW VARGHESE, S/O.ABRAHAM VARGHESE
2-C, CLIF DALE, NANTHANCOD, THIRUVANANTHAPURAM

BY ADVS.SRI.R.T.PRADEEP
SRI.V.VIJULAL

RESPONDENTS/APPELLANT/ACCUSED AND STATE:

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

2. SOJA S.MANOJ,V-57 A,MYNAKAM.T.V.STATION
ROAD, KUDAPPANAKUNNU, THIRUVANANTHAPURAM-695024

BY PUBLIC PROSECUTOR: SMT LISHA M G

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09-11-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.87 of 2011

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Dated this the 9th day of November, 2015

JUDGMENT

This appeal is directed against the judgment of the Additional Sessions Judge-I, Thiruvananthapuram in Crl.Appeal.No.331 of 2007.

2. The complainant, a partnership firm represented by its managing partner instituted a complaint alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, on the strength of a dishonoured cheque dated 23.08.2004 for Rs.23,400/-. Before the court below, the accused appeared and pleaded not guilty. On the side of the complainant, evidence was tendered in the nature of both documentary and oral evidence. Learned magistrate, on an evaluation of all inputs, found the accused guilty, convicted and sentenced to undergo simple imprisonment for three months and to pay compensation of Rs.25,000/- to the complainant under Section 357(3) of the Cr.P.C. This order was carried in appeal by the accused before the Sessions Court. Learned Sessions Judge, on an evaluation of the complaint and relying on Ext.P6 concluded that the person, who

instituted the complaint on behalf of the firm by name Mr.Mathew Varghese, was not the managing partner at the time of institution of the complaint and was incompetent to represent the firm. Consequently, learned Sessions Judge arrived at a conclusion that the complaint was ill instituted. Hence, the appeal was allowed, conviction was set aside and the accused was acquitted. This is assailed in this appeal at the instance of the firm. In spite of service of notice on the second respondent/accused, she has not appeared to contest the proceedings.

3. Heard the learned counsel for the appellant and examined the records.

4. The drawee of the cheque is one M/s.Universal Tours and Travels, claimed to be a partnership firm. The complaint was instituted by one Mathew Varghese claiming himself to be the managing partner of Universal Tours and Travels. The competency of that person to represent the firm was challenged before the trial court. The learned magistrate considered it as point No.1 in the judgment. The contention of the accused regarding it was repelled holding that the complaint was properly laid.

5. The view taken by the learned Sessions Judge was that at the time of institution of the complaint on 04.10.2008, Mathew Varghese had ceased to be the managing partner. The cheque was originally dated 23.03.2004 which was revalidated on 23.08.2004. It is an admitted fact that Mr. Mathew Varghese was the managing partner of the firm at the time of original issuance of the cheque. He ceased to be the managing partner with effect from 15.05.2004 consequent to the reconstitution of the partnership. Certain members joined and certain others retired. This is evident from Ext.P6, though the copy of the reconstituted firm is not on record. Evidently, as on the date of laying the complaint, Mr. Mathew Varghese was no longer the managing partner. To that extent, learned Sessions Judge was correct.

6. However, Ext.P6 is a copy of the resolution dated 16.05.2004. It refers to the partnership deed dated 15.05.2004 and it is stated that on the strength of that partnership deed, Mathew Varghese has power to represent the firm in respect of any liability that has arisen upto 15.05.2004. It was confirmed that the said Mathew Varghese can represent the firm in all pending cases before all magistrate court in Thiruvananthapuram.

This was confirmed by PW3, the present managing partner in his evidence. The competency of Mathew Varghese to represent the firm with respect to this litigation is evident from Ext.P6, resolution reinforced by the oral testimony of the present managing partner as PW3. This settles that issue.

7. Then the question that remains is whether designating himself as the managing partner was proper or not. It appears to be not correct. However, the competency of Mathew Varghese to represent the firm cannot be disputed in the light of the above finding. It leads to a natural and only conclusion that representing himself as the managing partner was factually incorrect. It is settled legal proposition that partnership being a compendium of persons who have decided to carry on business jointly and to share the profits, the firm can authorize any person to act on its behalf. Hence, though Mathew Varghese was not the managing partner, he had the authority to institute the case. He was competent to represent the firm since it related to liability which arose prior to 15.05.2004. This was correctly held by the learned magistrate also, when it was held that revalidation of the cheque relates back to the date of original creation of liability. Hence, designating

himself as the managing partner is only a mere technicality which should not have affected the validity of the complaint. Neither the complaint could have been dismissed on that ground alone nor a finding entered into by the trial court on merits could have been upset on a finding of mere technical nature.

8. Court below after holding the above, without going into the re-appreciation of the entire materials, has acquitted the accused. This finding is wrong and is liable to be set aside. Consequently, the matter is liable to be remitted back to the lower appellate court for fresh consideration of the allegations of the accused on merits, after giving a reasonable opportunity to both sides. Since the accused, who was the appellant before the court below, remained absent before this Court, the court below shall issue notice to the appellant for his appearance and thereafter shall pass fresh orders after affording a reasonable opportunity of being heard to both sides in accordance with law. The court below shall proceed as if the issue relating to competency of Mr.Mathew Varghese to institute the complaint stands settled. All other issues are left open.

In the result, the appeal is allowed. The parties shall be heard on the basis of the available materials and shall pass fresh judgment. Both sides shall appear before the court below on 19.12.2015.

Sd/-

SUNIL THOMAS
Judge

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