

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 8TH DAY OF OCTOBER 2015/16TH ASWINA, 1937

CRL.A.No. 89 of 2011 (A)

AGAINST THE JUDGMENT IN CC 151/2006 of JUDICIAL FIRST CLASS
MAGISTRATE COURT-II (FOREST OFFENCES), PUNALUR DATED 29.09.2010

APPELLANT/COMPLAINANT:

P.N.GOPINATHAN AGED 66 YEARS
S/O.NANU, ANIL NIVAS, MANIYAR.P.O
PUNALUR VILLAGE, PATHANAPURAM TALUK.

BY ADVS.SRI.R.RANJITH
SRI.R.RANJITH

RESPONDENTS/ACCUSED & STATE:

1. WE THREE ENTERPRISES AND OTHERS
MANAGER PARTNER V.A.ISSAQUE.

2. V.A.ISSAQUE, AGED 54 YEARS,
S/O.ABDUL RASAQUE, BASSARY BUILDING, VALAKKODU.P.O
PUNALUR VILLAGE, PATHANAPURAM TALUK.

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

R1 & 2 BY ADV. SRI.C.R.SIVAKUMAR
BY PUBLIC PROSECUTOR:SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 08-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.89 of 2011
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Dated this the 8th day of October, 2015

JUDGMENT

The complainant in C.C.No.151 of 2006 of the Judicial First Class Magistrate-II (Forest Offences), Punalur in a proceeding under Section 138 of the Negotiable Instruments Act, 1881 is the petitioner herein. It was alleged by the complainant that the 2nd accused had availed a loan of Rs.10,00,000/- from the complainant along with 20 others on the basis of a demand promissory note, undertaking to repay it with interest. Thereafter, towards the discharge of the outstanding liability, a cheque for Rs.3,33,000/- was issued by the 2nd accused on behalf of the 1st accused, which on presentation got dishonoured. After issuing a statutory notice, a complaint was laid before the court below. The accused appeared and contested the proceedings. On the side of the complainant, PWs.1 and 2 were examined and Exts.P1 to P6 were marked. On the side of the accused, DW1 was examined and Exts.D1 to D7(a) were marked. The court below on an evaluation of the available materials held that the complainant did not succeed in proving the allegation against the accused. The complaint was dismissed and the accused was acquitted. This is

under challenge in this appeal.

2. When the matter was taken up, learned counsel for the appellant submitted that the appellant had died pending the proceedings. To support it, learned counsel relied on the judgment of this Court in Crl.A.No.216 of 2011 dated 01.04.2015 wherein the death of the appellant has been recorded. Till now, none of the legal heirs have come forward to get themselves impleaded.

3. To substantiate the case of the complainant, he relied on the demand promissory note along with Ext.P2 cheque. Evidently, the cheque has been returned on the ground of insufficiency of funds and a statutory notice has also been issued. Hence, the complaint appears to have been legally instituted.

4. The accused has a case that he had not executed any promissory note in favour of the complainant. It was contended that the complainant was the proprietor of a chitty business in which the accused was the subscriber. At the time of bidding chitty, blank cheque was issued which was not returned even after full payment. According to him, complainant has manipulated the cheque to create a liability, which was not in existence. To substantiate it, he relied on documents marked as Exts.D1 to D7

(a). It was admitted by the complainant that he was running a chit business and the transaction with the accused in relation to the chit business was also admitted by him. Regarding the source, he admitted that though Rs.10,00,000/- was claimed to be paid, it was not recorded in his income tax returns. He further submitted that he was not maintaining any of the records which would show that the above sum was with him at that point of time. On the basis of these facts, court below justifiably arrived at the conclusion that the complainant did not succeed in proving the due execution. Evidently, the appreciation of the evidence of the court below is based on the quality of evidence tendered by either side. Suffice to say that the evidence on record is not sufficient to prove the due execution of the cheque. In the above circumstances, I feel that the court below has correctly arrived at the conclusion that the complainant failed to prove the due execution of the cheque. In the light of the above finding, I find no reason to interfere with the findings arrived at by the court below.

The appeal fails and is dismissed.

Sd/-

SUNIL THOMAS
Judge

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