

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

Crl.Rev.Pet.No. 1117 of 2003 ()

CRL.A 96/2001 of SESIONS JUDGE, WAYANAD, KALPETTA,

CC 204/2001 of J.M.F.C.-II, MANANTHAVADY

REVISION PETITIONER(S)/RESPONDENT/COMPLAINANT:

SHAMEER, S/o.ABDULLA, EKANDY MANZIL,
AMBUKUTTY, MANANTHAVADY, WAYANAD DISTRICT.

BY ADV. SRI.JOBI JOSE KONDODY

RESPONDENT(S)/APPELLANT/ACCUSED :

1. THANKACHAN, PERUMATTILKUNNEL HOUSE,
P.O.MAKKIYAD, MANANTHAVADY, WAYANAD DISTRICT.
2. STATE OF KERALA, REP. BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 03-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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Crl.R.P.No.1117 of 2003

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Dated this the 3rd day of June, 2015

ORDER

The revision petitioner is the complainant in C.C.No.204/2001 on the files of the Judicial First Class Magistrate's Court-II, Mananthavady. He filed the above complaint against the 1st respondent herein alleging offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the N.I.Act'). After trial, the learned Magistrate found the 1st respondent guilty of the said offence and convicted thereunder. He was sentenced to undergo simple imprisonment for one year. Feeling aggrieved, the 1st respondent preferred Criminal Appeal No.96/2001 before the Sessions Court, Wayanad. After hearing both parties, the learned Sessions Judge set aside the judgment passed by the Trial Court and remanded the matter to the Trial Court for fresh disposal in accordance with law. The legality and propriety of this order is under challenge in this revision petition.

2. Going by the impugned judgment, it is seen that the

judgment passed by the Trial Court was set aside on the reason that the 1st respondent had filed C.M.P.No.4744/2001 before the Trial Court to summon the extract of the account of the complainant in Canara Bank, Mananthavady branch and to prove the same through the Manager. But the said application was not disposed of and without disposing the same, the judgment was pronounced by the Trial Court.

3. Going by the impugned judgment, it is seen that the accused has a definite case that there was no transaction with the complainant and no amount is due to the complainant from him. In short, there was no legally enforceable liability. He denied the allegation that he borrowed an amount of 1,25,000/- from the complainant with an undertaking to pay the same within two months. When the complainant was cross examined, he deposed that he had withdrawn the amount which was given to the accused from Canara Bank and thereafter, the said amount was given to the accused. In that context, the accused had filed CMP No.4744/2001 to summon the extract of the account of the complainant in Canara Bank, Mananthavady Branch and the Manager to prove the same.

4. In view of the rival pleas, I find that as rightly held by the court below, the trial court should have pronounced the judgment after passing order on CMP 4744/2001 only. But the said petition was not disposed of and without disposing the same, judgment was pronounced in this case. In this analysis, the learned Sessions Judge set aside the impugned judgment and remitted back the case to the trial court with a direction to dispose of CMP No.4744/2001 at first and then dispose the main case. There is no illegality or impropriety in the impugned judgment under challenge.

This revision petition is devoid of merits and dismissed accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.Ato Judge