IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

Crl.Rev.Pet.No. 493 of 2009 ( )

AGAINST THE JUDGMENT IN CRA 617/2008 of SESSIONS COURT, KOZHIKODE DATED 13-01-2009

AGAINST THE JUDGMENT IN ST 298/2007 of SPL.JUDICIAL FIRST CLASS MAGISTRATE FOR TRIAL OF MARADU CASES, KOZHIKODE DATED 19-06-2008

REVISION PETITIONER/APPELLANT/ACCUSED:

MAVILI PRABHAKARAN, AGED 68 YEARS,
S/O.SANKARAN NAIR, ERANTHODE, VALAMBOOR P.O.
ANGADIPPURAM, PERINTHALMANNA.

BY ADV. SRI.C.A.JOY

RESPONDENTS/RESPONDENT/COMPLAINANT:

1. JICKY JOHN, AGED ABOUT 40 YEARS,
S/O.JOHN, M/S.SUPER COMPUTER FORMS
DREAM LAND BUILDING, KALOOR BAZAR ROAD, MANKAVU
CALICUT.

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

R1 BY ADV. SRI.P.V.KUNHIKRISHNAN
R2 BY PUBLIC PROSECUTOR: SRI ABHIJITH LESLIE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SUNIL THOMAS, J.

================================

Crl.R.P.No.493 of 2009

================================

Dated this the 16th day of December, 2015

ORDER

The revision petitioner impugns the concurrent findings of the courts below in a proceeding under Section 138 of the Negotiable Instruments Act.

2. The first respondent herein laid a complaint under Section 138 of the Negotiable Instruments Act alleging that a cheque issued by the revision petitioner herein/accused before the courts below for a sum of Rs.7,00,000/- towards the discharge of a legally enforceable debt was dishonoured. The accused contested the proceeding, inter alia, contending that the cheque was not signed by him and that it was not drawn on the account maintained by him. This contention was rejected by the trial court. This was carried in appeal in Crl.A.No.617 of 2008. Same contention, along with other contentions raised by the revision petitioner before the appellate court was also not accepted by the appellate court, which concurred with the finding of the trial court.

3. Contending that both the Courts have failed to take note of essential ingredients under Section 138 of the Negotiable

Instruments Act and thereby committed serious irregularity resulting in arriving at faulty conclusion, this revision has been preferred.

4. Heard both sides and examined the records.

5. The main ground on which the learned counsel harped his contention was that the cheque was purported to have been issued by the accused on behalf of Valluvanadu Khadi and Village Industries Development Co-operative Society Limited. It was contended that the society was not made a party to the proceeding. It was further contended that the cheque was drawn on an account maintained by the Valluvanad Development Society, which was a totally different society. Hence, learned counsel contended that this essential point, if considered by the courts below, would have resulted in the dismissal of the complaint on the ground that a proceeding under Section 138 of the Negotiable Instruments Act would not lie. Another contention was also set up by him that the cheque was not drawn by him.

6. A perusal of the complaint which was referred to at length by the learned counsel for the revision petitioner clearly shows that the accused is shown by his name. It is true that at

various places in the complaint, he has been referred as the President of the above said society. However, a close perusal of the entire pleadings in the petition would disclose that it is essentially styled as a complaint on the basis of an individual transaction entered into by the revision petitioner and that, he himself had availed loan for the society and had issued the cheque. There is no case for the complainant that the dealing was with the society, though passing references are made that the accused was the President of the society.

7. Regarding the main contention of the learned counsel for the revision petitioner that the cheque was drawn not on the account of the society, in which he was represented but on a totally different society Valluvanad Development Society, learned counsel advanced detailed arguments touching upon the complaint and the evidence, both documentary and oral. It seems that when the matter came up before another Honourable Judge for hearing, invoking provisions under Section 391 of Cr.P.C., the details of the concerned bank were called for and are available on record. It was contended by the learned counsel that this would clinch the whole issue and sought a remand for advancing the contention, which

according to him, he had been pursuing right from the beginning.

8. It is pertinent to note that there was no reply to the lawyer notice. Even though a feeble contention was set up by the learned counsel for the revision petitioner that the lawyer notice was in fact replied, no such suggestion was made to PW1 at any point of time. Even though in the chief affidavit, there is a specific averment that the lawyer notice was received by the revision petitioner but was not replied, this has not been challenged. Not even a suggestion was made that he had sent a reply. Hence, that contention is now not available to the revision petitioner.

9. It was contended by the revision petitioner that the cheque was drawn on a totally different society. Though a suggestion was put to PW1 that he has not signed the cheque and that he has not drawn the cheque, the specific suggestion that the disputed cheque was not drawn on an account maintained by him either in his individual capacity or in his capacity as the President of the society was never suggested to PW1. In fact, the cheque was not dishonoured on the ground that it was drawn on a totally different account. It was dishonoured on ground of insufficiency of funds. No such suggestion was even put by the accused when he

was questioned under Section 313 Cr.P.C. questioning. These facts eminently show that at no point of time before the trial court, when both parties went for evidence with open eyes, he had ever set up a specific contention that Ext.P1 cheque was not drawn on an account maintained by him in his capacity either individually or as the office bearer of any society. He did not raise such a contention, either in 313 Cr.P.C. questioning or in the cross examination of PW1.

10. Even though the learned counsel for the revision petitioner very persuasively contended that the cheque was not even executed by him, this was considered by both the courts below. No evidence was adduced on the side of the accused. The complainant in his evidence had specifically asserted that the cheque was brought by the accused, filled it up and signed in his presence. Of course, this was challenged in the cross examination. The courts below have referred to the admitted signature available on record. To find out whether the revision petitioner has got a sustainable ground even at this belated stage, I have also perused the records. Strangely, the admitted signature part in the first document, which is the acknowledgment card received pursuant to

the lawyer notice shows the name of the accused as well as the signature. The signature part is different from the signature in Ext.P1, though, the name beneath have similarities with that of the alleged signature portion in Ext.P1. However, all the subsequent signatures seen on the admitted documents appear to be uniform but different from that of Ext.P1.

11. The document produced by the Bank pursuant to the direction of this Court shows that the account holder is M/s.Valluvanad Development Service Society. In this background, the contention of the learned counsel coupled with his contention right from the beginning that it was not drawn on the bank maintained by him assumes significance. Though a contention can be taken up by the complainant that signature means any mark of any person who purports to execute as a token for execution of it may be available, still, with this input, I feel that it may be proper to have a remand of the matter to enable the accused to establish his defence as alleged above. This is for the limited purpose of establishing that the cheque is not executed either by him or on an account maintained by him. Definitely, this will call for a rebuttal of the evidence, if any, by the complainant also as confined to the

above fact. Since this situation has been brought up by the accused in not adducing evidence at the right time, I feel that the remand can only be on terms. However, it is also made clear that in the event of any other offence in relation to the cheque being brought out in the course of evidence, the Court may consider that also in the light of the legal provisions. The impugned order will stand set aside and the matter remanded to the trial court for a fresh consideration on deposit of a sum of Rs.5,000/- by the revision petitioner before the High Court Mediation and Conciliation Centre within four weeks from today.

In the result, the revision is allowed. The impugned judgments are set aside and the matter is remanded to the trial court on condition that revision petitioner deposits a sum of Rs.5,000/- in the High Court Mediation and Conciliation Centre within four weeks from today and produce a receipt before the trial court. It is made clear that remand is limited for the purpose of enabling the accused to adduce evidence in relation to his contention that the cheque was not drawn by him on his account. Complainant can also adduce further rebuttal evidence confined to this aspect, if he so chooses. Both sides shall appear before the trial court on 29.01.2016. In case of production of the receipt as mentioned, the impugned judgments will stand set aside and both sides will be given an opportunity to tender the evidence on the above point. Thereafter, the court below shall proceed to pass appropriate orders in accordance with law.

Sd/-
SUNIL THOMAS
Judge

Sbna

True Copy /

P.A to Judge