

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

Crl.Rev.Pet.No. 965 of 2007 ()

CRA 701/2001 of ADDL.DISTRICT COURT (ADHOC)-III, THALASSERY

CC 609/2001 of ADDL.C.J.M.,THALASSERY

REVISION PETITIONER(S)/RESPONDENTS 3 TO 8 /COMPLAINANT:

1. JAMEELA, W/O.LATE N.ISMAIL,
RESIDING AT NOOR VILLA, KAYYATH ROAD, THALASSERY.
2. SAUJATH, RESIDING AT DO.
3. SEENATH, RESIDING DO.
4. RAUSHATH, RESIDING DO.
5. SADATH, RESIDING DO.
6. SHABANA, RESIDING DO.

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENT(S)/APPELLANT/ACCUSED & STATE:

1. V.ABOOBACKER, S/O.MAMMAD,
DRY FISH BUSINESS, GOPALPETTA, THALASSERY-2.
2. STATE OF KERALA REP.BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R, BY ADV. SRI.V.CHITAMBARESH
R, BY ADV. SRI.T.C.SURESH MENON

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

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K.HARILAL, J.

Crl.R.P. No.965 of 2007

Dated this the 6th day of March, 2015

ORDER

This revision petition is preferred against the judgment in Cr. Appeal No.701/2001 on the files of Additional Sessions Court (Adhoc – III), Thalassery. The above appeal was filed by the first respondent herein challenging a conviction entered and sentence imposed on him under Section 138 of the Negotiable Instruments Act, on a complaint filed by the father of the Revision Petitioners. The complaint was originally filed by one Ismail, who is the father of the petitioners. During the pendency of the appeal, the said Ismail died and petitioners were impleaded as additional respondents 3 to 8 in the appeal. The Additional Chief Judicial Magistrate Court Thalassery as per judgment dated 21.11.2001 found the first respondent/accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and convicted thereunder. He was

sentenced to undergo simple imprisonment for one year. Feeling aggrieved the first respondent herein preferred the above appeal and the appellate court after re-appreciating the evidence on record set aside the conviction entered against the first respondent and remanded the case back to the trial court for fresh consideration. This revision petition is filed by the legal heirs of the deceased complainant, challenging the judgment whereby the appellate court set aside the judgment passed by the trial court and remanded the case back to the trial court.

2. In this revision petition, the petitioners contended that, the courts below went wrong in remanding the cases especially in view of the fact that sufficient opportunities were given to the parties to adduce evidence. It was only after reported that the evidence on both sides were closed, the case was posted for judgment. At no point of time, the accused made any request or filed any petition to re-open the case to adduce a fresh evidence. So, the lower appellate court went

wrong in granting a relief which was not prayed for. The lower appellate court ought to have found that the complainant has successfully discharged the initial burden of proving execution and issuance of the cheque. But the accused miserably failed to rebut the presumption under Section 139 and 118(a) of the Negotiable Instruments Act which stood in favour of the complainant. In the above circumstances, the appellate court ought not have remanded the case back to the trial court by granting an undue advantage to the accused for adducing fresh evidence.

3. In view of the contentions raised in this revision petition the question to be considered whether the court below can be justified in setting aside the judgment and remanding the case back to the trial court. Going by the pleadings of the accused it could be seen that the accused admitted the signature in the cheque as well as the issuance of the cheque to the complainant. But his specific case is that the said cheque was issued as a security in connection with a mortgage transaction with

the original complainant. Needless to say the burden is heavy on the accused show that the cheques were issued as security for the property transaction.

4. Going by the judgment it is seen that the accused had cited three witnesses as defense witnesses and the summons issued to witnesses. The notice sent to Shri.Mayin by registered post was returned unserved with the endorsement not known. But it is evident from the fact that the said Mayin has sent a notice to the accused that there was such a person by name Mayin. As rightly observed by the Court Below it could not be said that Mayin cited by the accused is a fictitious person and he is not known. But the trial court has not taken any steps to get the presence of that witness who is the most important witness to prove the defense case, by issuing process to that witness through other modes of service. In the above context it can be held that the evidence was closed without serving summons to the witnesses properly. I do not find any fault with the findings of the court below that the trial court has shut down the

evidence.

5. In this analysis, I am of the opinion that the appellate court is justified in setting aside the judgment passed by the trial court and remanding the case back for a fresh consideration. There is no illegality or impropriety in any of the findings in the impugned judgment.

This revision petition will stand dismissed.

Sd/-
K.HARILAL, JUDGE

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PA TO JUDGE

