2025:KER:30733

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

THURSDAY, THE 10TH DAY OF APRIL 2025 / 20TH CHAITHRA, 1947

CRL.A NO. 1186 OF 2008

AGAINST THE ORDER OF ACQUITTAL BY THE CHIEF JUDICIAL MAGISTRATES COURT, MANJERI DATED 1-1-2008 IN ST NO.150/2006.

APPELLANT/COMPLAINANT

K.P.ALI AKBAR, PARTNER,
K.P. GROUP TRADING SYSTEMS, PALLIKKAL PO,
PALLIKKAL AMSOM, ERNAD TALUK, MALAPPURAM DIST.

BY ADV SRI.P.SAMSUDIN

RESPONDENTS/ACCUSED AND STATE:

1 **SHAFI V.,**
VARIYAMVEETIL HOUSE, ULLIYERI P.O.,
KOYILANDI VIA, KOZHIKODE DIST.

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

BY ADV SRI.CIBI THOMAS.
SRI.VIPIN NARAYAN, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02.04.2025, THE COURT ON 10.04.2025 DELIVERED THE FOLLOWING:

2025:KER:30733

C.S.SUDHA, J.

Crl.Appeal No.1186 of 2008

Dated this the 10th day of April 2025

J U D G M E N T

This is an appeal under Section 378(4) Cr.P.C. filed by the complainant against the judgment dated 01/01/2008 in S.T.No.150/2006 on the file of the Court of the Chief Judicial Magistrate, Manjeri, aggrieved by the acquittal of the accused under Section 255(1) Cr.P.C. of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (the Act)

2. According to the complainant, he is a partner in the partnership concern, namely, K.P. Group Trading System. The complainant and the accused are acquaintances. The accused had purchased electrical goods worth ₹58,000/- on credit from the complainant on 20/03/2006. Towards discharge of the said liability, the accused issued Ext.P3 cheque dated 20/03/2006 drawn on the Bank of Baroda, Kozhikode Branch. Ext.P3 cheque

was dishonoured due to insufficient funds in the account of the accused as per Exts.P4 and P5 memos dated 28/03/2006 and 03/04/2006 respectively. The complainant caused to issue Ext.P6 lawyer notice dated 25/04/2006. Though the notice was received by the accused as evidenced by Ext.P8 acknowledgment card, he neither sent a reply nor cleared the cheque amount. Hence, the complaint.

3. The trial court on the basis of the sworn statement of the complainant, took cognizance of the offence under Section 138 of the Act and summons was issued to the accused. When the accused appeared on receipt of summons, he was furnished with copies of all the relevant records. The particulars of the offence was read over and explained to the accused to which he pleaded not guilty.

4. The complainant examined himself as PW1 and Exts.P1 to P8 were marked on his side. After closing the evidence of the complainant, the accused was duly questioned under Section 313(1)(b) Cr.P.C. He denied the entire allegations

and pleaded innocence. The accused offered himself as a witness and hence he was examined as DW1 and Ext.D1 series receipts were marked on his side.

5. The trial court on consideration of the oral and documentary evidence and after hearing both sides, by the impugned judgment, found the complaint to be not maintainable and hence acquitted the accused under Section 255(1) Cr.P.C. Aggrieved, the complainant has come up in appeal.

6. The only point that arises for consideration in this appeal is whether the finding of acquittal of the accused by the trial court requires any interference by this Court.

7. Heard both sides.

8. It was submitted by the learned counsel for the appellant/complainant relying on the dictum in **Bhupesh Rathod v. Dayashankar Prasad Chaurasia, 2021 (6) KHC 368 : 2022 (2) SCC 355** that the trial court went wrong in concluding that the complaint was not maintainable and hence the impugned judgment is liable to be reversed.



9. In the complaint, the complainant is described as '*K.P.Ali Akbar, Partner, K.P.Group Trading System, Pallikkal P.O., Malappuram District'*. In Ext.P3 cheque, the payee is K.P. Group Trading System. Ext.P1 is the partnership deed as per which it is the managing partner who has been authorised to commence, prosecute and defend Firm in all suits, claims, demands etc. The managing partner as per Ext.P2 dated 20/04/2006 has authorised the complainant to take legal action against the accused for dishonour of the cheque issued to the Firm. Further, in the light of the dictum of the Apex Court in **Bhupesh Rathod** (*Supra*), it can only be held that there is no fundamental defect in the complaint. Apparently, the trial court went wrong in finding that the complaint itself is not maintainable.

10. The trial court acquitted the accused solely on the ground that the complaint was not maintainable. The evidence adduced by neither the complainant nor the accused was looked into. The case is seen instituted before the trial court in

the year 2006. If this Court decides the matter on the basis of the evidence on record, it may cause prejudice to both sides as they will lose the right of appeal. That being the position, I am constrained to remand the matter to the trial court for a consideration of the complaint on merits based on the materials on record.

In the result, the appeal is allowed. The matter is remanded to the trial court with a direction to dispose of the matter on merits within a period of two months from the date of receipt of a copy of this judgment.

Interlocutory applications, if any pending, shall stand closed.

Sd/-
C.S.SUDHA
JUDGE

Jms