

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE N.K.BALAKRISHNAN

FRIDAY, THE 30TH DAY OF NOVEMBER 2012/9TH AGRAHAYANA 1934

CRL.A.No. 1160 of 2003 ()

AGAINST THE ORDER/JUDGMENT IN CRLP.185/2003 DATED 11-07-2003
CC.441/2001 of J.M.F.C. – I, ETTUMANUR

APPELLANT(S):

GEORGEKUTTY THOMAS,
KOTTUPPALLIL HOUSE,
ONAMTHURUTHU P.O.

BY ADV. SRI.SOORAJ ELANJICKAL

RESPONDENT(S):

1. SHAJI VARGHESE,
PLAMOOTTIL HOUSE,
ETTUMANOOR P.O.
KOTTAYAM
2. STATE, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

FOR R1 ADV. SRI.ABRAHAM MATHEW (VETTOOR)
BY PUBLIC PROSECUTOR SMT. JASMINE V.H.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
30-11-2012, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

N.K. Balakrishnan, J.

.....
Crl.Appeal No. 1160 of 2003
.....

Dated: 30-11-2012

JUDGMENT

The complainant in a case filed under Sec. 138 of the Negotiable Instruments Act, 1881 is the appellant. The first respondent herein was acquitted by the learned Magistrate under Sec. 255 (1) Cr.P.C.

2. The case of the complainant is that the accused had borrowed from him a sum of Rs. 50,000/- on 3-6-2001 and to discharge that debt Ext.P1 cheque dated 23-6-2001 was issued. When presented for collection, it was dishonoured on the ground of insufficiency of fund. Statutory notice was sent to the accused. He acknowledged the same, but no reply was sent. The money covered by Ext.P1 was not paid. complainant as P.W.1 testified in tune with his case and also

marked Ext.P1 to P9 documents. The accused contended that a blank signed cheque leaf was given to DW2 (Prince) when he (DW1) had borrowed a sum of Rs. 10,000/- from DW2 and that out of the said amount Rs. 5,000/- was re-paid and that the blank signed cheque leaf given to DW2 was given by him to the complainant who is a close friend of DW2 and that the accused had no transaction with P.W.1.

3. The learned Magistrate found that Ext.P1 was filled up with one ink whereas it was signed using another pen and that the date was put on Ext.P1 using yet another pen and so the trial Court found that the case put forward by the accused is more probable and thus the accused was acquitted.

4. The learned counsel for the appellant submits that the court below went wrong in holding that because the cheque was filled up using another pen, the case put forward by the accused was probable. The fact that not even a reply was sent by the accused even after the statutory notice was

acknowledged by him would clearly show that a story was subsequently trotted out by the accused to wriggle out of the liability. DW2 the witness examined by the accused did not support the case suggested by the defence. Therefore, what remained is only the evidence given by P.W.1. No plausible explanation was offered for not sending a reply. True that non-sending of the reply alone cannot be a reason to accept the complainant's case. But the evidence given by P.W.1 regarding the lending of money and the handing over of the signed cheque by the accused does not suffer from any serious infirmity so as to doubt the case put forward by him. If as a matter of fact, the accused had borrowed money from DW2 and the cheque leaf was not returned by DW2, he would normally have sent a notice to him. That was not done. He also did not file any complaint against D.W.2. Simply because the signature on Ext.P1 was put using another pen it cannot be presumed that the transaction did not take place as deposed by P.W.1. There was no occasion for any other

person to see the transaction since according to P.W.1 he and the accused along were there at the time of transaction. Going through the evidence given by P.W.1 and from the fact that no reply was sent to the statutory notice, I find that the evidence regarding the execution of Ext.P1 could be proved by the complainant. The presumption under Sec. 139 of the N.I. Act could not be rebutted by the accused. If so, the verdict of acquittal given by the court below has to be set aside and consequently, conviction should follow. Hence, this CrI. Appeal is disposed of as follows:

In reversal of the judgment of acquittal passed by the learned Magistrate, the accused is found guilty of the offence under Section 138 of the N.I. Act and he is convicted thereunder. The sentence of imprisonment till the rising of the Court and to pay Rs. 51,000/- as compensation to P.W.1 the complainant and in default whereof the first respondent/accused will undergo simple imprisonment for two months. The first

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respondent/accused is granted two months time to pay the amount of compensation and also to undergo imprisonment till rising of the Court.

N.K. Balakrishnan,
Judge.

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