

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 28TH DAY OF JUNE 2019 / 7TH ASHADHA, 1941

Cr1.L.P..No.321 of 2019

AGAINST THE JUDGMENT IN CR.A No.208/2016 of SPECIAL COURT FOR
SC/ST (POA)ACT CASES, MANJERI DATED 27-07-2018

PETITIONER/RESPONDENT/COMPLAINANT:

P.P.SURESH KUMAR
AGED 51 YEARS
SON OF P.K.P NAIR, WE HELP SECURITY AGENCIES,
PATTAMBI ROAD, PERINTHALMANNA, PIN-679 322,
MALAPPURAM DISTRICT.

BY ADVS.
SRI.C.N.SREEKUMAR
SMT.MANJU PAUL
SRI.ANIL PRASAD
SRI.SABU P.JOSEPH

RESPONDENTS/APPELLANTS/ACCUSED:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM-682 031
- 2 K. RAJASEKHARUNNI,
AGED 59 YEARS, SON OF MADHAVA VARYAR, KULATHUR
VARIYAM, VALAMBUR P.O, PATTIKKAD VAZHI, PIN-679 325,
MALAPPURAM DISTRICT.

C.K. PRASAD, PUBLIC PROSECUTOR

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON
28.06.2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

Leave is sought to file appeal from judgment dated 27.07.2018 of the Special Court for SC/ST (POA) Act Cases, Manjeri. The appeal arose from a judgment passed by the Judicial First Class Magistrate Court-I, Perintalmanna dated 19.10.2016 in S.T No.1877/2013. S.T No.1877/2013 is a prosecution launched by the petitioner herein against the 2nd respondent, alleging that the he has committed an offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I Act).

2. The accused denied the accusation leveled against him, when read over and explained to him and he pleaded not guilty. He faced trial. The trial court found him guilty for the offence punishable under Section 138 of the N.I Act and convicted and sentenced him to undergo imprisonment till rising of the court and pay fine of Rs.75,000/- (Rupees Seventy Five Thousand only) and in default of payment of fine, to undergo simple imprisonment for 3 months. The fine amount on recovery or realization is also directed to be paid to the complainant as compensation under Section 357 (3) Cr.P.C.

3. Against the judgment of the trial court, the accused preferred appeal before the Special Court for SC/ST (POA) Act Cases, Manjeri as Crl.A No.208/2016. The appellate court reversed the finding of guilt of the accused and acquitted him. It is from that judgment for preferring appeal, leave is sought.

4. It is submitted by Sri. Anil Prasad, the learned counsel for the leave petitioner that, the appellate court went wrong while appreciating the evidence to arrive at a finding that the accused is not guilty.

5. According to him complainant by his oral evidence adduced as PW1 has successfully established the execution of Ext.P1 cheque which formed the basis of the transaction. According to him, the accused did not succeed to controvert PW1 in any manner but, the court below in it's perverse appreciation of evidence found on the contrary. According to him, the said reason formed a good ground for preferring appeal against the judgment and therefore, the application seeking leave is filed.

6. In the judgment sought to be challenged, a detailed description about the evidence relied on by the trial court is

discussed with.

7. As PW1, the complainant disposed strictly in tune with his pleadings in the complaint filed to launch the prosecution. His case was that Rs.75,000/- was borrowed by the accused from him and on demanding repayment, Ext.P1 was issued towards discharge of the liability. It got bounced for lack of funds in the account of the accused and therefore, prosecution is launched. PW1 was cross examined by the accused on his source of income to advance Rs.75,000/-. According to him, he is the proprietor of 'We Help Security Agencies', engaged in the conduct of providing security staff to various institutions and the income derived from the agency was advanced to the accused. But, when confronted further, he has stated that he was not an income tax payee and has no documents with him to establish his income from the agency. It is also stated by PW1, that there were transactions whereby, money was lent to the accused but, those were discharged by the latter. According to PW1, the accused was his friend and therefore, he had advanced money to him, but, he was not acquainted with the place where the accused resides. The evidence tendered by PW1 as above casts a doubt on his source to advance money and thereby the transaction as pleaded by him.

8. Relying on the said evidence, the trial court found the complainant as defeated to establish his case. Absolutely, no reason is found by this Court to deviate from the findings of the courts below. Evenif, appeal is permitted to be filed, that will not help the complainant to establish his case successfully in view of the nature of the evidence available.

In the result, leave petition is dismissed and leave is declined to file appeal.

Sd/-

MARY JOSEPH

JUDGE

JJ/