

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 30TH DAY OF NOVEMBER 2020 / 9TH AGRAHAYANA, 1942

CRL.A.No.728 OF 2004

AGAINST THE ORDER IN CC 1057/1999 DATED 06-02-2004 OF JUDICIAL
MAGISTRATE OF FIRST CLASS -III, PUNALUR

AGAINST THE ORDER IN Cr1.L.P. 233/2004 DATED 01-04-2004 OF HIGH
COURT OF KERALA

APPELLANT:

RAJESH KUMAR
S/O RAVEENDRAN PILLAI, BHAGAVATHI VILASOM, BHARANI
KAVU, PUNALUR VILLAGE.

BY ADVS.
SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH

RESPONDENTS:

1 A.K.RAJU
S/O KUNJURAMAN, REGHU VILASOM, IKKARAKONAM,
PUNALUR VILLAGE.

2 STATE OF KERALA REPRESENTED BY ITS
DIRECTOR OF PUBLIC PROSECUTION,
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.B.KRISHNA MANI
R1 BY ADV. SRI.RAHUL VENUGOPAL
R2 BY PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 23-11-2020, ALONG WITH CRL.A.305/2005(A), THE COURT ON 23-11-2020 DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

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Crl.A. No. 728 of 2004

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Dated this the 30th day of November, 2020

J U D G M E N T

Appellant is the complainant in C.C. No.1057/1999 on the file of the Judicial First Class Magistrate Court-III, Punalur. The above case is filed by the appellant against the 1st respondent herein alleging offence punishable under Section 138 of the Negotiable Instruments Act (herein after the parties are mentioned in accordance to their rank before the lower court).

2. The complainant's case in brief is as follows:

During march 1999 the accused borrowed a sum of Rs.2,55,000/- from the complainant. When the amount was demanded the accused issued a cheque for 1,30,000/- dated 5.8.99 of Indian Bank, punalur branch and a cheque for Rs. 25,000/- dated 10.9.99 and a cheque for Rs.1.lakh dated 15.9.99 of Federal Bank, punalur branch. In addition

to this another cheques for Rs.1,60,000/- was given by the accused. The complainant presented the cheque for encashment through syndicate bank, punalur branch. But the cheques were dishonored stating that there is no sufficient funds in the account of the accused. Thereafter the complainant issued a registered lawyer notice dated 28.10.99 calling upon the accused to repay the amount. The accused accepted the notice but did not repay the amount. Hence, the complaint was filed.

3. To substantiate the case, two witnesses were examined on the side of the complainant. Exts. P1 to P11 are the documents marked on the side of the complainant. Three witnesses were examined on the side of defence. Exts. D1 to D13 are the defence exhibits.

4. After going through the evidence and documents, the trial court found that, the accused is not guilty under Section 138 of Negotiable Instruments Act. Aggrieved by the above acquittal order, this criminal appeal is filed.

5. Heard the learned counsel for the complainant, the learned counsel for the accused. I also heard the

learned Public Prosecutor.

6. The learned counsel for the complainant submitted that, the complainant proved the offence under Section 138 of Negotiable Instruments Act. The learned counsel submitted that, there is a presumption in favour of the complainant under Section 138 of Negotiable Instruments Act. The learned counsel submitted that, the trial court erred in acquitting the accused.

7. The learned counsel for the accused submitted that, the trial court after considering the entire oral and documentary evidence came to a definite conclusion that, the accused committed the offence. The learned counsel submitted that, there is nothing to interfere with the judgment in an appeal against the acquittal.

8. The point for consideration in this appeal is whether the accused committed the offence under Section 138 of the Negotiable Instruments Act.

9. The trial court after considering the entire oral and documentary evidence came to a definite conclusion that, the accused in this case is entitled to the benefit of

doubt. The trial court considered the defence case also. The trial court after going through the entire evidence including the defence evidence found that the accused is not guilty. The findings of the trial court is in para 7 to 11 of the impugned judgment, which is extracted hereunder;

" 7. PW1 is not at all disclosing the source of his income to raise a huge sum of Rs.4,15,000/-. The accused has got a definite case that all the six cheque leaves were given to Reveendranpillai and after the death of Reveendranpillai the complainant as well as his brother divided the cheques and filed different complaints. Exts.D8,D9 & D10 and three cheque leaves of the accused which is the subject matter of CC.No. 870/2000 pending before the judicial 1st class magistrate court-II, punalur. In that complaint, the complainant is none other than the brother of PW1. Ext.D7 is the certified copy of the complaint in that case. On a perusal of Ext.D8, D9 & D10 it is clear that these 3 cheque leaves were also dated 20.8.99, 20.9.99 and 1.10.99. In further cross-examination PW1 would admit that the original sale deed of the property of the accused is with his mother still. This fact has to be read along with the admission made by PW1 that the 6 cheque leaves of the accused which are subject matter of CC. No. 270/2000 and the present case are of different dates and different banks. PW1 has got a definite case that Rs.4,15,000/- was borrowed by the accused. If that be so, he should have insisted for a single cheque to avoid multiplicity of proceedings. But

PW1 has absolutely no explanation for the non demand of the single cheque for the discharge of the liability. Similarly he would fairly admit that there is absolutely no explanation for receiving the 6 cheque leaves of different dates and different banks.

8. DW1 is the manager of Federal Bank, Punalur branch. Ext.P2 &P3 are the cheque leaves of Federal Bank, Punalur branch. Account No. 556 which was in the name Morning Furniture Mart was closed during 1993. according to him, Ext.P1 cheque came for collection only during 1999.

9. DW2 is none other than the accused. He would content that Ext.P1 cheque was given by him to the father of the complainant for Rs. 30,000/- alone and the complainant had inserted a digit 'one' before digit '3' and had manipulated the cheque to Rs. 1,30,000/-. On a close perusal of Ext.P1 is it ample clear the digit '1' and digit '3' are not written in a single stretch. It clearly shows that the digit 'one' was inserted subsequently. It is also evident that the handwritings regarding the amount, date and the payee's name are put by another person who had written the figures and put signature. This version of DW2 also shows that the version of PW1 that he had transaction with the accused is absolutely false.

10. DW3 is another independent witness examined by the defence. According to him, he had chitty business with the father of the complainant and he had given blank cheque leaves as security. After the death of Reveendranpillai he obtained receipt from the brother of PW1. Ext. P13 is the receipt obtained by DW3 from the brother of PW1.

11. The presumption u/s. 139 of N.I.Act is a rebuttable presumption. Of course the burden is upon the accused to rebut the presumption. Here the accused would depend upon the evidence of DWs 1 to 3 and Exts. D1 to D13 to prove that he had no transaction with the complainant and Exts. P1 to P3 and D8 to D10 cheques were given to Mr.Reveendranpillal for the chitty transaction. Ext. D12 extract and the evidence of DW1 clearly shows that the other cheque leaves of the accused were presented before the bank even prior to 1999. It is surprising to see that one of the accounts were closed during 1993. All these factors cumulatively shows that the version of the defence is more probable. The complainant failed to establish that Exts. P1 to P3 cheques were issued by the accused to the complainant in discharge of a legally enforceable debt. Point answered against the complainant”.

10. I see no reason to interfere with the well considered judgment of the the trial court. The trial court considered all the evidence available in this case, along with the defence evidence. Thereafter, the trial court concluded that, the accused is not guilty under Section 138 of Negotiable Instruments Act. There is nothing to interfere in an appeal against the order of acquittal passed by the trial court.

Therefore, this criminal appeal is dismissed confirming the order dated 06.02.2004 in C.C. No.1057/1999 on the files of the Judicial First Class Magistrate Court-III, Punalur.

**Sd/-
P.V.KUNHIKRISHNAN,
JUDGE**

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