2025:KER:36110

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 26TH DAY OF MAY 2025 / 5TH JYAISHTA, 1947

CRL.A NO. 202 OF 2014

AGAINST THE JUDGMENT DATED 20.11.2013 IN ST NO.99 OF 2012 OF JUDICIAL MAGISTRATE OF FIRST CLASS –II, PERINTHALMANNA

APPELLANT/COMPLAINANT:

ABDURAHIMAN
S/O.ALAVI, VADAKKAN VEEDU, PARAKKULAM,
VANIYAMBALAM (PO), MALAPPURAM DISTRICT.

BY ADV SRI.R.RAMADAS

RESPONDENTS/ACCUSED AND STATE:

1 **MUHAMMEDKUTTY T.K**
S/O.KUNHAMUTTY, THANDUPARAKKAL (H),
VANIYAMBALAM (PO), MALAPPURAM DISTRICT,
PIN – 679 339.

2 **STATE OF KERALA**
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM
PIN – 682 031

BY ADVS.
SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA
SMT.D.S.THUSHARA

ADV SHEEBA THOMAS, PUBLIC PROSECUTOR

THIS CRIMINAL APPEAL HAVIGN BEEN FINALLY HEARD ON 21.05.2025, THE COURT ON 26.05.2025 DELIVERED THE FOLLOWING:

CR

JUDGMENT

Dated this the 26th day of May, 2025

Complainant in ST No.99/2012 on the files of the Judicial First Class Magistrate Court-II, Perinthalmanna, has filed this appeal under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.' for short), with leave of this Court challenging judgment of acquittal in the said case dated 20.11.2013. The 1st respondent herein is the accused before the trial court and the 2nd respondent is the State of Kerala, represented by the Public Prosecutor.

2. Heard the learned counsel for the appellant/complainant as well as the learned counsel for the accused/1st respondent. Also heard the learned Public Prosecutor. Perused the records of the trial court.

3. I shall refer the parties in this appeal as 'complainant' and 'accused' for easy reference.

4. The complainant approached the magistrate court on the allegation that the accused committed offence punishable under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act' for short). The specific case of the complainant is that the accused borrowed Rs.6,00,000 (Rupees six lakh only) from the complainant on 16.09.2011 and issued Ext.P1 cheque, dated 22.09.2011, for the said sum to discharge the debt. But on presentation of the cheque for collection, the same was dishonoured on 22.09.2011 for want of funds. According to the complainant, even after issuance of notice, the amount was not paid.

5. The trial court took cognizance for the offence punishable under Section 138 of the NI Act and proceeded with trial. During trial, PW1 was examined and

Exts.P1 to P4 were marked on the side of the complainant. PW2 and PW3 were also examined on the side of the complainant. Ext.D1 also marked through PW1. After questioning the accused under Section 313(1)(b) of Cr.P.C., when an opportunity was provided to the accused to adduce defence evidence, the accused examined DW1, an attestor of Ext.D1 agreement, and marked Ext.D2 also.

6. The trial court, on appreciation of evidence, acquitted the accused on the finding that since Ext.D1 agreement, showing discharge of the liability, was proved, there was no legally enforceable debt or liability at the time of presentation of Ext.P1 cheque.

7. The learned counsel for the complainant argued that the finding of the trial court, in paragraph No.15, to the effect that there was no legally enforceable debt or liability at the time of presentation of Ext.P1 cheque on 22.09.2011, is absolutely erroneous. According to him, even

going by the date in Ext.P1, the plea of discharge raised as on 24.12.2011 would not be sufficient to find so. Therefore, the finding of the trial court that there was no legally enforceable debt on the date of presentation of the cheque is erroneous. It is pointed out by the learned counsel for the complainant further that presumption under Sections 118 and 139 of the NI Act would arise either on proof of execution of cheque or admission of the debt or liability. He has placed decision of the Apex Court in **Rajesh Jain V. Ajay Singh**, reported in **(2023) 10 SCC 148** in support of this contention.

8. It is pointed out by the learned counsel for the complainant further that the finding of the trial court that the accused proved Ext.D1 agreement is not sustainable, since the accused, who alleged to have paid Rs.6 lakh in terms of Ext.D1 agreement, was not examined. According to the learned counsel for the complainant, examination of DW1, one among the attesting witnesses to Ext.D1, alone is

insufficient to prove the plea of discharge. If so, it could not be held that the discharge plea raised by the accused is proved. In such contingency, the case of the complainant is proved, rather admitted to hold that the accused committed offence punishable under Section 138 of the NI Act. Therefore, the verdict of the trial court would require reversal.

9. Repelling this contention, the learned counsel for the accused argued that Ext.D1 was confronted with PW1 and proved through him when he admitted signatures on three pages of Ext.D1 agreement. According to the learned counsel for the accused, even though PW1 denied the execution of Ext.D1 during re-examination, the evidence of DW1 supporting execution of Ext.D1 was not shaken during cross-examination and therefore, the trial court rightly found that the liability was discharged. In view of the matter, no interference is required in the verdict impugned.

10. Having addressed the rival contentions, the questions arise for consideration are:

1. Whether the trial court went wrong in holding that the liability in relation to Ext.P1 cheque was discharged by execution of Ext.D1 agreement?.
2. Is there any interference required in the verdict of the trial court?
3. Order to be passed?

11. **Point Nos.1 and 2:**

In the instant case, the case of the complainant is that the accused borrowed an amount of Rs.6,00,000/- (Rupees six lakh only) from the complainant on 16.09.2011 and assured repayment of the same through cheque dated 22.09.2011, drawn on Gramin South Indian Bank, Wandoor branch. But when the cheque was presented for collection on 22.09.2011, the same was dishonored for want of funds. Even after issuance of demand notice, the same was not

repaid. In order to prove the case of the complainant, the complainant himself was examined as PW1 and the witnesses, who were present at the time of transaction, also were examined as PW2 and PW3. PW2 and PW3 supported the case of the complainant in the matter of transaction which led to execution of Ext.P1 cheque. Ext.P2 is the dishonour memo, Ext.P3 is the lawyer notice and Ext.P4 is the acknowledgment.

12. The contention raised by the accused throughout the proceedings is that there was a liability of Rs.6 lakh between the complainant and the accused and it was discharged on 24.12.2011 by executing Ext.D1 agreement. It was so stated by the accused during his questioning under Section 313(1)(b) Cr.P.C. Apart from that, he had examined DW1 – Mohandas, the 2nd witness in Ext.D1, to prove that the liability of Rs.6 lakh to the complainant was repaid by the accused. Ext.D1 would show

that at the time of discharge, Ext.P1 blank cheque and blank stamp paper issued at the time of transaction could not be traced and it was agreed by the complainant that the same would be handed over to the accused on getting the same traced.

13. Now the entire dispute stands centered on the question as to whether Ext.D1 agreement, whereby the accused raised plea of discharge, is proved since the case of the complainant as to liability of Rs.6 lakh is either proved or admitted by the contention raised by the accused and through Ext.D1.

14. According to the learned counsel for the complainant, non-examination of the accused himself to prove Ext.D1 is fatal and in such contingency, it could not be held that Ext.D1 was proved in this case to support the plea of discharge. According to the learned counsel for the complainant, if the accused offered himself as a witness, the complainant had an opportunity to cross-examine him

regarding the manner of discharge etc. Since such an opportunity has been denied, Ext.D1 could not said to be proved. In this matter, while addressing this contention, it is relevant to note that when PW1 was cross-examined, Ext.D1 was confronted to PW1 and during cross-examination, he admitted his signatures on page nos.1, 2 and 3 and accordingly, Ext.D1 was marked through PW1. During further cross-examination, even though PW1 stated that the entire amount was not repaid, he did not deny the execution. But on re-examination, he had denied the execution of Ext.D1 stating that he did not execute any document undertaking discharge of the liability. It is relevant to note that nothing stated by PW1, how Ext.D1 came into existence. Similarly, no explanation was given by PW1 to justify possession of Ext.D1 containing three pages where the signatures of PW1 are admitted. Most importantly, he had no case that he had issued any blank signed stamp papers or white papers for

any other purpose and Ext.D1 was forged in any manner. This is the context in which the evidence of DW1 is required to be considered. During the chief examination, DW1 supported execution of Ext.D1 and repayment of Rs.6 lakh by the accused to the complainant. During cross-examination, other than mere suggestions, nothing extracted to disbelieve his version. That apart, during cross-examination of DW1 also, nothing suggested regarding possession of Ext.D1 document by the accused wherein the signatures of PW1 are admitted. In such a contingency, it could not be held that non-examination of the accused himself is a reason to disbelieve the execution of Ext.D1, as deposed by DW1, where the signatures on all pages were admitted by PW1.

15. It is the settled law that once plea of discharge is raised in respect of a particular amount, it is the bounden duty of the person to prove his plea of discharge by

cogent and convincing evidence. Once such burden is discharged, no further action on the basis of the discharged debt is legally permissible either in the form of penalisation or in the form of realisation of the same. Even though it is argued by the learned counsel for the complainant that no legally sustainable evidence was adduced to prove Ext.D1, the discussion hereinabove would lead to the conclusion that the accused proved Ext.D1, rather the same is consented by PW1 by admitting his signatures therein without any further explanation. It is true that the trial court wrongly found that there was no legally enforceable debt on the date of presentation of cheque instead of finding that the liability covered by Ext.P1 was discharged by execution of Ext.D1.

16. Even though in this case, the transaction to the tune of Rs.6 lakh and issuance of Ext.P1 cheque is proved rather admitted by the accused, by proving Ext.D1 agreement the accused succeeded in establishing the plea

of discharge of the amount covered by Ext.P1. Therefore, the verdict of acquittal rendered by the trial court on the said finding does not require any interference and in such view of the matter, the appeal must fail.

In the result, this criminal appeal stands dismissed.

All interlocutory applications pending in this appeal stand dismissed.

Registry is directed to forward a copy of this judgment to the trial court forthwith.

Sd/-
A. BADHARUDEEN
JUDGE

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