(2009) 05 KL CK 0107

High Court Of Kerala

Case No: Criminal A. No. 532 of 2003

Antony Irumban		APPELLANT
	Vs	
State of Kerala and K.P. Raphel		RESPONDENT

Date of Decision: May 28, 2009

Hon'ble Judges: M.N. Krishnan, J

Bench: Single Bench

Advocate: K.S. Babu, for the Appellant; U.O. Jose, for the Respondent

Judgement

M.N. Krishnan, J.
This appeal is preferred against the judgment in C.C.154/00. It was a case filed under the N.I. Act with the averment that the accused had borrowed a sum of Rs. 1,25,000/- and towards the discharge of the liability the accused had issued cheque which when presented on 7.9.1999 returned with the endorsement of insufficiency of funds and after issuing a statutory notice action has been initiated.

2. The defence appears to be that the accused had joined in a kuri conducted by Goodwill Hire Purchase Chit and Finance Ltd. and had bid the kuri in auction and at the time of getting the amount had given a blank cheque as security which had been used by one of the Directors to file a case of this nature. The Court below found that having borrowed the amount from a Co-operative Bank, under ordinary human conduct he should not have advanced the amount and therefore believed the case set up by the accused and acquitted the accused. It is against that decision the present appeal is preferred.

3. Heard the learned Counsel for the appellant and perused the records. It is the case of the complainant that the accused had borrowed a sum of Rs. 1,25,000/- on 30.5.1999 and had issued a cheque on 7.6.1999 towards the discharge of the liability. When it was initially presented it was returned for insufficiency of funds and at the instance of the accused it was again represented in the month of September then also it met with the same fate. A notice was issued for which no reply was sent. The evidence in this matter is

that of PW1 and DW1. PW1 had categorically asserted that he had advanced the money and the source of advancing. He had this money by availing a loan from the Thrissur Urban Co-operative Bank Ltd. It is true that it is averred that the availment of loan was in the month of November, 1998 and the advancement of the loan of this case was on 30.5.1999. So the Court below held that after taking a loan with a stipulation to pay interest nobody would have kept the amount with him and so the case appears to be totally unbelievable. It has to be understood that in Ext.D6 notice even the accused would say that the complainant is a Director of the chit company namely Goodwill Hire Purchase Chit and Finance Ltd. So it may not be correct to hold that the complainant did not have any resources at all. One cannot visualize a situation where a person thinking that he will have to spend the money for the daughter''s marriage, keeps the money with him for some time. It has come out in evidence that the complainant had advanced loan to the accused on previous occasions as well. It shows that they were not strangers. The Court has to consider whether there were materials to prove that at the relevant point of time a chitty had been bid in auction and the person had executed any bond or any cheque. It cannot be simply accepted because the accused says so in the 313 questioning or in his evidence. When a matter can be proved by documentary evidence and when the accused had chosen himself to enter the box and produce some documents, the Court is certainly empowered to look into the aspect regarding the chit transaction alleged to be stated by the accused. Therefore the Court has not properly weighed the evidence and so it is desirable that an opportunity is given to the complainant in this case to adduce further evidence if he wants and if the accused wants he can also do the same and then the matter be disposed of in accordance with law. Therefore the judgment under challenge is set aside and the matter is remitted back to the trial court for consideration by permitting both the complainant and the accused to adduce evidence and produce documents and the Court thereafter to dispose of the matter in accordance with law. Since the presence of the accused is absolutely necessary I direct the complainant to take out summons to the accused afresh after the complainant enters appearance before the Court below on 6.7.2009.

The Crl.Appeal is disposed of as above.