

â@
Cr1.A.No. 18 OF 1996

ITEM NO.109

COURT NO.06

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.18 OF 1996@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

JOHNY MATHEW ... APPELLANT(S)

VERSUS

KURIAN ... RESPONDENT(S)

Date: 31/10/2002. This/These matter(s) were called on for hearing today.@@
AAAAAAAAAAAA

CORAM:

HON'BLE MR. JUSTICE U.C. BANERJEE
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant (s) Mr. E.M.S. Anam, Adv.

For Respondent(s) Mr. Ramesh Babu M.R., Adv.
Mr. N. Sudhakaran, Adv.

UPON hearing counsel the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T....J.
.SP2

Heard learned counsel for the parties for
about fifteen minutes.
The appeal is dismissed in terms of the
signed order.

.SP1

(K.K. Chawla) (Shelly Sengupta)@@
AA
Court Master Court Master

[Signed order is placed on the file]

.PA
.PL56

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.18 OF 1996@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

JOHNY MATHEW ... APPELLANT

VERSUS

KURIAN

... RESPONDENT

O R D E R@@
CCCCCCCC

.SP2

This appeal stands directed against the judgment of the Kerala High Court reversing the order of acquittal to an order of conviction under Section 138 of The Negotiable Instruments Act, (in short "The Act") as against accused No.1 though, however, the order of acquittal against accused Nos.2 and 3 was sustained.

The learned Magistrate while passing an order of acquittal recorded as below:

.....L.....I.....T.....T.....T.....T...J.

.SP1

"According to the defence, Exhibit P.1 cheque was manipulated one by the complainant himself for the amount of Rs.45,000/-. The cross-examination of the complainant was mainly focussed on this ground. It was argued that an amount of Rs.15,000/- was due to the complainant by the accused by virtue of a promissory note and a money suit O.S. 58/90 was filed in the Sub Court for realising the amount of Rs.15,000/-

..2/-

-2-

from the accused persons. This amount of Rs.15,000/- was advanced to the accused during the month of March 1987. It was admitted by the complainant in his own words that "Rs.45,000/- was paid to the accused when the accused owed Rs.15,000/-".

So it is highly improbable to advance of Rs.45,000/- as debt to the accused persons, the defence urged. It was submitted that Exhibit P.1 cheque was manipulated one by this complainant which was given along with the promissory note for the Rs.15,000/-. The amount of Rs.15,000/- was due in the month of March, 1987. To strengthen this argument the defence counsel has marked Exhibit D.2. PW.2 the Bank Manager has proved Exhibit D.2. Exhibit D.2 was the counterfoil of the cheque book starting from No.454651 to 454675. It was issued from the State Bank of India. Now the Exhibit P.1 cheque in question No.454669 was admittedly a cheque leaf in Exhibit D.2 and all the cheques leaves were seen used in the year 1987 itself. So it can be safely presumed that the cheque Exhibit P.1 might have issued in the year 1987. As a matter of fact in 1987 there was no debt amount of Rs.45,000/-

by the accused to the complainant. The amount of Rs.45,000/- the subject matter in this case was alleged to be advanced on 11.9.1989. So the learned defence counsel has appreciably brought out that Exhibit P.1 was one of cheque leaf in Exhibit D.2, and all the leaves in Exhibit D.2 was seen used in the year 1987 itself. This probabalises that the cheque Exhibit P.1 was not all issued on 11.9.1989 as stated by the complainant. So I believe that issuance of the Exhibit P.1 cheque on 11.9.1989 cannot be believed. It is no doubt, true that, the Negotiable Instruments Law (Amendment) Act 1988 being introduced to prevent harassment of honest drawers that is to say the holder of the cheque must be safeguarded from the bouncing of the cheque by the drawer."

..3/-

-3-

.....L.....I.....T.....T.....T.....T.....T.....T.....J.
.SP2

It is this reasoning which stands negated by the High Court upon recording the factum that the cross-examination reveals the accused had no definite stand regarding issue of the cheque and the liability. In any event, nothing has been brought out to suggest that there was no liability or that the cheque was not issued in discharge of that liability. The cheque being Exhibit P.1 was issued by the first accused. It bears the signature of the first accused and in fact no serious dispute has been raised regarding the signature contained therein. In view of the facts noticed above, the High Court recorded that the complainant has thus succeeded in establishing the issue of the cheque by the first accused and who in any case will be liable under Section 138 of the Act by reason of the cheque not being honoured.

We do find some justification in recording of the reasons by the High Court. The learned Magistrate was rather hasty in the matter in coming to a conclusion as recorded hereinbefore and the High Court, in our view, rightly set aside the same.

..4/-

-4-

On the wake of the aforesaid, we do not see any reason to interfere with the impugned judgment. This appeal, therefore, fails and thus stands dismissed.

.SP1

.....J.

(U.C. Banerjee)

.....J.
(B.N. Agrawal)

New Delhi,
October 31, 2002.