
(2014) 09 KL CK 0154
In the High Court Of Kerala
Case No : CrI. L.P. No. 240 of 2014

Anilkumar. M

APPELLANT

Vs

Leena Suraj

RESPONDENT

Date of Decision : 29-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 255(1)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2014) 09 KL CK 0154

Hon'ble Judges : V.K. Mohanan, J

Bench : Single Bench

Advocate : Sunil Nair Palakkat and K.N. Abhilash, Advocate for the Appellant; R. Rema, Public Prosecutor, Advocate for the Respondent

Judgement

V.K. Mohanan, J.—The petitioner herein is the complainant in STC 3866 of 2012 of the Court of Judicial First Class Magistrate, Thalassery. The petitioner/complainant proposed to file an appeal against the judgment dated 10.6.2014 in the above case, as per which, the learned Magistrate acquitted the accused under Section 255(1) of Cr. P.C., who faced prosecution for the offence punishable under Section 138 of the N.I. Act at the instance of the petitioner/complainant.

2. Heard the learned counsel for the petitioner and also perused the impugned judgment.

3. The case of the petitioner/complainant is that, on 10.10.2011, the accused borrowed a sum of Rs. 2,14,000/- from the complainant and towards the repayment of the said amount, the accused issued a post dated cheque dated 4.4.2012 for Rs. 2,14,000/-, which when presented for encashment dishonoured and no amount was paid despite of a statutory notice. Thus, according to the petitioner/complainant, the accused has committed the offence punishable under Section 138 of the N.I. Act.

4. During the trial, the complainant himself was examined as PW1 and produced Exts. P1 to P5 documents. Ext. D1 series (collection cards) were produced from the side of the defence, but no witness was examined. The trial court has found that the complainant has miserably failed to prove the execution of cheque and consequently, the accused was acquitted. It is the above finding and acquittal are sought to be challenged, for which, leave of this Court is sought for to file an appeal.

5. Learned counsel for the petitioner submitted that the finding of the learned Magistrate is wrong and illegal. However, the learned counsel for the petitioner submitted that the finding of the court below is incorrect/illegal. I am unable to accept the above contention. In paragraph 8 of the judgment sought to be challenged, the learned Magistrate has stated that, the evidence of PW1 shows that he is not a person with good financial background and he admitted that he had worked as a collection agent of a money lending company named "Kubera Lakshmy" and it is also observed that the admission made by him further shows that, the accused had transaction with the above company and PW1 collected amount from the accused on behalf of the above company. According to the learned Magistrate, the above admission made by PW1 has proximity with the defence version. Further, found that a mere look at Ext. P1 cheque would show that the same was filled up by different persons. It is also stated in the judgment that, in cross examination, PW1 admitted that he himself wrote his name in Ext. P1 cheque and the amount was written by the husband of the accused. It is also observed by the learned Magistrate that, the accused signed Ext. P1 cheque using different pen. On the basis of the above facts, the learned Magistrate has specifically observed that if the accused has issued Ext. P1 cheque as a post dated cheque at the time of borrowing the amount, she can very well fill the same and hand over it to the accused and there is no circumstance for the accused to seek the help of any other person to fill that cheque. Likewise, PW1 did not write his name in the cheque as claimed by him. After having considered the above facts, which are detriment to the interest of the complainant and in favour of the accused relying on the decision in Bhaskaran Nair C. Vs. B. Mohan and Another, , the learned Magistrate has found that the execution of the cheque itself is in suspicious circumstances.

6. As I indicated earlier, the learned Magistrate has already found that Ext. P1 cheque is filled up by different persons. PW1 has stated that he himself written his name in Ext. P1 cheque. The entries in Ext. P1 cheque are made by using different pen. Under the above circumstances, it cannot be said that the finding of the court below is incorrect or perverse so as to interfere in appeal and the well considered reasons assigned by the learned Magistrate are supported by the evidence on record which are not disputed by the petitioner. As such, according to me, the petitioner is miserably failed to make out a prima facie case in support of his challenge against the judgment of the trial court. Therefore, I find not even a remote possibility to interfere with the finding of the court below and the order of acquittal recorded in favour of the accused.

In the result, the above leave petition is devoid of any merit and accordingly, the same stands dismissed.