
(2021) 04 KL CK 0042

In the High Court Of Kerala

Case No : Criminal Appeal No. 1279 Of 2006

Antony Stephen Fernando

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 08-04-2021

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138
Code Of Criminal Procedure, 1973 — Section 357(1)

Citation : (2021) 04 KL CK 0042

Hon'ble Judges : T.R. Ravi, J

Bench : Single Bench

Advocate : Latheesh Sebastian, S.L. Sylaja, Joy C. Paul, Bobby George

Judgement

1. The complainant in S.T.No.997/2004 on the file of the Judicial First Class Magistrate, Devikulam has filed this appeal being aggrieved by the judgment dated 14.02.2006, whereby the accused/1st respondent was acquitted of an offence under Section 138 of the Negotiable Instruments Act.

2. Heard Sri.Latheesh Sebastian, learned counsel on behalf of the appellant and Sri.Bobby George, learned counsel on behalf of the 1st respondent.

3. According to the appellant, the 1st respondent had borrowed ₹ 70,000/- from him on 15.5.2004 and when repayment

was demanded, a cheque dated 15.6.2004 drawn on the Catholic Syrian Bank Ltd., Thodupuzha branch, had been issued, which when sent for collection returned dishonoured for the reason of insufficiency of funds in the account of the 1st respondent. When no payment was made even after the appellant had issued the statutory notice, the complaint is said to have been filed. Before the trial court, the complainant examined himself as PW1 and the Manager of the Bank as PW2. Exts.P1 to P7 series were marked. The accused did not adduce any evidence. A contention was taken on behalf of the accused that the complainant had not issued notice as contemplated by the Negotiable Instruments Act. The

trial court found that the cheque was issued for discharge of a liability and that the same had been dishonoured for insufficiency of funds in the account of the accused. However, on the question of notice, the court found that it was not issued within 30 days of receipt of intimation from the Bank regarding dishonour. The 1st respondent was hence acquitted, which is challenged in this appeal.

4. The learned counsel for the appellant contended that the finding of the court below is against the documentary evidence produced before the Court, which has been supported by the testimony of the Bank manager. The court below had placed undue reliance on Ext.P6 "Returned Cheque Remittance Memo" to hold that the intimation was given to the appellant regarding the dishonour on 5.7.2004 and on that basis concluded that since the notice is issued on 5.8.2004, the notice cannot be said to have been issued within 30 days. The counsel for the appellant referred to Ext.P7, P7(a) and P7(b) and contended that it is evident from the records of the Bank that the complainant received intimation only on 7.7.2004 and that the notice was within time. It can be seen from the judgment of the court below that even though the Court had considered Ext.P7(b), the court was of the opinion that the said document will only go to show that the cheque was returned on 7.7.2004 and not that the intimation was given on that day. The Court instead relied on Ext.P6, which is dated 5.7.2004, wherein there is an endorsement "By hand", and held that the intimation had been given on 5.7.2004 and the cheque was returned on 7.7.2004. In the process, the court below has not even considered the effect of the oral evidence tendered by the Manager of the Bank.

5. I have gone through the entire documentary evidence and the depositions of the witnesses. I find considerable force in the contention raised by the learned counsel for the appellant. Ext.P6 which is the "returned cheque remittance memo" has no doubt been prepared on 5.7.2004 as the date written on it indicates. The endorsement "By Hand" only indicates the manner in which the information is passed on to the payee. The Manager has specifically stated that merely because Ext.P6 is prepared on 5.7.2004, it does not mean that the same was handed over on the same day. The document that shows the factum of return of the cheque and intimation of dishonour is actually Ext.P7, and Ext.P7(b) which is the photocopy of page 34 of the said register, clearly shows that the cheque and the intimation had been collected by the appellant only on 7.7.2004. On a perusal of the above documents, I find that what is stated by the Manager is the correct state of affairs. Ext.P6 does not contain any indication that the appellant had received the same on 5.7.2004 and there is no endorsement to that effect. The finding of the court below that Ext.P7(a) cannot override Ext.P6 is without any legal basis. Both the documents are documents kept by the Bank in its course of business and are complementary in nature. The accused has no case that the content of Ext.P7 is wrong or that it has been created by the bank to support the case of the appellant. In the light of Ext.P7, P7(a) and P7(b), and the evidence of PW2, Manager of the Bank, I am of the opinion that the appellant received intimation regarding dishonour of the cheque only on 7.7.2004 and the

notice which has been issued on 5.8.2004, is well within the time prescribed by the statute.

6. In such circumstances, the appellant is entitled to succeed in this appeal. The judgment dated 14.2.2006 in ST.Case No.997 of 2004 on the file of the Judicial First Class Magistrate, is set aside. The 1st respondent is found guilty of offence under Section 138 of the Negotiable Instruments Act. Since the cheque in question was issued almost 17 years ago, the accused is sentenced to pay a fine of Rs.1,40,000/- being twice the amount of the cheque in question. Out of the amount of fine, the appellant shall be paid a sum of Rs.1,35,000/- as compensation under Section 357(1) of the Code of Criminal Procedure. In default of payment of fine, the accused shall undergo simple imprisonment for a period of 6 months. In view of the pandemic, the accused is granted a period of 4 months from today to deposit the amount of fine, failing which the Magistrate shall take necessary steps to execute the sentence.

The Registry shall forward the entire records of the case to the Judicial First Class Magistrate, Devikulam forthwith.