
(2014) 07 KL CK 0224
In the High Court Of Kerala
Case No : Crl. Rev. Pet. No. 3324 of 2003

Baby Thomas

APPELLANT

Vs

Bharathy

RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 139

Citation : (2014) 07 KL CK 0224

Hon'ble Judges : P. Ubaid, J

Bench : Single Bench

Advocate : K.M. Sathianatha Menon, Advocate for the Appellant; Githesh R., Public Prosecutor, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

P. Ubaid, J.—On an allegation that a cheque for Rs. 71,936/- issued by the revision petitioner in favour of the complainant (First respondent herein) in discharge of the price of Fertilizer purchased by him was dishonoured due to insufficiency of funds, the revision petitioner faced prosecution before the Judicial First Class Magistrate Court, Malappuram in C.C No.389/2001. He pleaded not guilty to the accusations and claimed to be tried. The complainant is the proprietor of a concern involved in the sale and distribution of fertilizers. He examined himself as PW1 and marked Exts. P1 to P6 during trial. The revision petitioner did not adduce any oral evidence in defence, but Exts. P1 to P3 were marked. The defence case pleaded by the accused is that he had worked for sometime as a commission agent under the complainant, and had handed over a blank cheque as security when he joined service. After he left the complainant's shop the complainant misused the said cheque and made a false complaint against him, with the object of extracting some money from him. On an appreciation of the evidence adduced by the complainant the learned Magistrate found the revision petitioner guilty u/s 138 of the Negotiable Instruments Act. On conviction he was sentenced to undergo simple imprisonment for three months,

and also to pay a fine of 5,000/-.

2. Aggrieved by the conviction and sentence, the revision petitioner approached the court of Session, Manjeri with Crl. A 1/2002. In appeal the learned Sessions Judge confirmed the conviction and sentence, and accordingly dismissed the appeal. Now the accused is before this court in revision, challenging the legality and propriety of the conviction and sentence.

3. In spite of due notice, the first respondent who is the complainant in the court below, did not turn up to contest this revision. On hearing the learned Counsel for the revision petitioner and on a perusal of the case records, I find that the complainant has proved the offence punishable u/s 138 of the Negotiable Instruments Act. Of course, the defence could bring out some material during trial to show that the revision petitioner had in fact worked for some time under the complainant as an employee or as a commission agent. In such a situation the case of the complainant that the cheque was in fact issued in discharge of price of fertilizer purchased by the revision petitioner can be doubted. However the evidence on his side is not strong enough to disprove the case of the complainant. Execution of Ext. P1 cheque is spoken to by the complainant in evidence. When initial burden stands discharged, it is for the accused to rebut the presumption u/s 139 of the Negotiable Instruments Act. Some vague suspicion will not in fact rebut the legal presumption u/s 139 of the Negotiable Instruments Act. Of course, the materials on the side of the accused will be considered deciding the proper sentence. The Ext. P4 notice was caused in time by the complainant, and the complaint was also filed well within time. Exts. P2 and P3 documents will show that the cheque in question was bounced due to insufficiency of funds. The revision petitioner has no case that he had funds in his account to honour the cheque or that the cheque was bounced on some other ground. He has also no case that he had made payment of the cheque amount as demanded by notice or otherwise. Thus I find that the complainant has proved his case on facts with the necessary elements and ingredients of the offence punishable u/s 138 of Negotiable Instruments Act and he has also proved compliance of the statutory requirement. I find no illegality or irregularity or impropriety in the conviction made by the courts below.

4. Now the question is whether the sentence requires interference in this case. Of course, the trial court could not have imposed anything more than Rs.5,000/- as fine in the year 2001. In the particular facts and circumstances discussed above, I feel the necessity of modifying the jail sentence, by reducing it to the minimum possible under the law. With this modification in sentence, the revision can be allowed in part.

In the result this revision petition is allowed in part, confirming the conviction u/s 138 of Negotiable Instruments Act. However the sentence will stand modified to the effect that the jail sentence imposed by the courts below will stand reduced to imprisonment till rising of the court. The fine sentence, with default sentence thereon, is maintained. The revision petitioner will surrender before the trial

court within one month to serve out the sentence and make payment of the fine amount, voluntarily, on failure of which steps shall be taken by the trial court to enforce the sentence and recover the amount of fine, or enforce default sentence.