
(2004) 10 KL CK 0018
In the High Court Of Kerala
Case No : Criminal R.P.No. 820 of 2004

Basheer

APPELLANT

Vs

Mahasakthi Enterprises

RESPONDENT

Date of Decision : 11-10-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 446
Evidence Act, 1872 — Section 3, 73
Negotiable Instruments Act, 1881 (NI) — Section 138, 139

Citation : (2005) 3 KLT 163

Hon'ble Judges : R. Basant, J

Bench : Single Bench

Advocate : T.N. Manoj, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R. Basant, J.—This revision petition is directed against concurrent verdict of guilty, conviction and sentence in a prosecution u/s 138 of the N.I.Act.

2. The cheque is for an amount of Rs. 50,000/-. Admittedly, there were transactions between the complainant and the accused regarding supply of ceramic tiles. Admittedly, there was an outstanding liability in favour of the complainant. Admittedly, the cheque in question - Ext.P1 is drawn on a cheque leaf issued by the petitioner's bank to him to operate his account. The cheque was dishonoured on the ground of insufficiency of funds. Notice of demand was duly received and acknowledged. It did not evoke any response. As the payment was not made within the time stipulated by law, the complainant came to Court with the complaint u/s 138 of the N.I.Act.

3. The accused denied the offence alleged against him and thereupon, PWs. 1 and 2 were examined on the side of the complainant and Exts.P1 to P6 were marked. The accused, who did not respond to the notice of demand threatening prosecution, did in the course of trial attempt to take up a stand that the signature in the cheque is not his. According to him, he was ill and was

hospitalised. A relative of his one Jiyas was managing his business during his absence. The said Jiyas, it was alleged, had stolen a cheque leaf and had issued Ext.P1 imitating his signature. The accused wanted the cheque to be sent to the expert. PW1, the expert examined the cheque and rendered his opinion in Ext.D1 report that the signature appearing in the cheque is not that of the accused. The accused examined the expert as DW1 and himself as DW2. Ext.D1 was marked.

4. The Courts below, on an anxious consideration of all the relevant inputs, chose not to accept and act upon the opinion of the expert DW1 and Ext.D1 report submitted by him. According to the Courts below, the other evidence available in the case is overwhelming and therefore the opinion of the expert was not accepted and acted upon. The Courts below found that all the ingredients of the offence punishable u/s 138 of the N.I.Act have been satisfactorily established by the evidence adduced by the complainant.

5. The learned counsel for the petitioner/accused reiterates the contentions which were urged before the Courts below. He contends that the Courts below erred grossly in discarding the expert scientific evidence tendered by DW1 in Ext.D1 report. The Courts below acted perversely in choosing to accept the oral evidence of PWs. 1 and 2 over the unassailable expert evidence tendered by DW.1, it is urged.

6. I shall initially consider the evidence tendered on the side of the complainant. The evidence of PWs.1 and 2 show clearly that Ext.P1 cheque was issued by the petitioner/D.W.2 to PW1. Admittedly, there were transactions. There was outstanding liability. The complainant had refused to make further supplies, unless the outstanding liability was cleared. It is, in these circumstances, that at the instance of PW2 the accused accompanied him to PW1 and executed and handed over Ext.P1 cheque. No semblance of a valid reason is shown to exist which can persuade the Courts to reject the evidence of PWs. 1 and 2. The oral evidence of PWs. 1 and 2 is eloquently supported by their ability to produce Ext.P1 cheque which is written on a cheque leaf admittedly issued by the petitioner's bank to him to operate his account. Their evidence gets further support from the fact that notice of demand, though duly received and acknowledged, did not evoke any response. That is indeed an abnormal, improbable and artificial piece of conduct if the version of the accused were true. The accused had raised very serious allegations against Jiyas, his own representative, who was running his establishment on his behalf during his alleged absence. If, as a matter of fact, the said Jiyas had thieved the cheque leaf on which Ext.P1 were written, it would be idle to assume that the petitioner, as a reasonably prudent person, would not have sent a reply to the notice of demand threatening criminal prosecution against him. Nay, it is stranger and more artificial that he would not have taken any action against the said Jiyas who allegedly had thieved the cheque leaf and had exposed the petitioner to civil and criminal consequences. All these circumstances must, according to me, compellingly persuade an ordinarily prudent mind to come to the conclusion that

the evidence of PWs.1 and 2 that the cheque was issued by the petitioner can be safely accepted. I must also note that, once the issue of the cheque by the accused is proved, the presumption u/s 139 of the N.I.Act is also heavily in favour of the complainant.

7. As against these, we have the evidence of DW2 that Ext.P1 does not bear his signature; that Ext.P1 was thieved by the said Jiyas and that the petitioner hence has no liability in respect of Ext.P1 cheque. The defence set up by the accused in the light of the proved circumstances referred above rebels against reason, logic and commonsense. Section 3 of the Indian Evidence Act is often referred to as the Bible of a court of facts. A fact is said to be proved when the Court on the basis of the materials available before it believes in its existence or considers its existence so probable that an ordinarily prudent person ought to act on the supposition that such fact exists. On the basis of the available inputs, the conclusion is irresistible that the lame explanation and excuse belatedly pressed into service by the petitioner/accused cannot be accepted and the evidence of PWs. 1 and 2 deserve to be accepted. If it were only the evidence of DW2 on the defence side, any Court could have discarded the defence of the accused lock, stock and barrel without any hesitation.

8. The short question that survives for consideration is whether the evidence of DW1 and Ext.D1 that the signature appearing in Ext.P1 is not that of the petitioner is sufficient for the Court to throw over board the entire other evidence available in the case. It is unnecessary to avert to the precedents which have been cited copiously before me. Expert's evidence, undoubtedly, is admissible. The expert's evidence by its very nature is only opinion evidence. It is by now trite that the science of identification of handwriting is not a "perfect" science and the opinion has to rely on subjective as well as objective observations and inferences drawn. As distinguished from scientific evidence like finger print etc., the science of identification of handwriting cannot be said to be absolutely foolproof and cent percent reliable. I have gone through the evidence of DW1 and his report Ext.D1. I must readily agree that much dent has not been made in his evidence in the course of cross-examination. I must also readily agree with the learned counsel for the petitioner that the Court, though often described as the "expert of experts", should not try to lightly substitute its impressions gathered by examination u/s 73 of the Evidence Act for the opinion of the expert. But all that notwithstanding, the law on the point is very clear. The expert only aids and helps the Court by his opinion. The expert does not decide. He only helps and assists the Court to decide. Due weight is to be given to the opinion of the expert. But the opinion of the expert cannot substitute or take the place of proof in a trial--civil or criminal. Even the evidence of DW1 shows that it is possible for a person to deliberately masquerade his handwriting to mislead others. Natural variations are all possible between standard writings and the disputed writings. Totality of circumstances have to be taken into consideration and no Court can decide the disputed questions sitting in the island of the opinion tendered by the handwriting expert.

9. So considered, I am certainly of opinion that the Courts below were certainly justified in accepting the case of the complainant notwithstanding the evidence tendered by D.W.1 and Ext.D1 which are incongruent to the evidence tendered by PWs. 1 and 2. The appreciation of evidence is both an art and a science. All relevant inputs have to be taken into consideration for the Court to answer a disputed question of fact. Each circumstance including the opinion tendered by an expert must be taken into consideration. All the relevant inputs must be placed in the crucible. But the result of such appreciation must stem from prudence, reasonableness and intelligence of the Court. The knowledge of men and matters of the Court would be crucial. The knowledge of the court of common course of events and natural and probable behaviour of human beings will be vital. The yardsticks of a reasonably prudent mind have to be accepted. All relevant circumstances must go into the decision making. When the evidence is sifted, weighed, tested, analysed and evaluated, no one piece of evidence can be said to overrule the others unless such evidence be clinching, convincing and beyond doubt. That cannot be said about the evidence of DW1 and Ext.D1. I am, in these circumstances, certainly of opinion that the Courts below have committed no error in coming to the conclusion that the evidence of DW1 and Ext.D1 cannot persuade them to throw over board the other pieces of evidence in favour of the complainant. At any rate, that concurrent decision on facts does not warrant correction by invoking the revisional jurisdiction of superintendence.

10. In coming to this conclusion, I have carefully eschewed the comparison made by the Court and the impression gathered by examining the disputed and standard writings u/s 73 of the Evidence Act. Even after totally eschewing the same, I am satisfied that the conclusion of fact that Ext.P1 was executed and handed over by DW2 to PW1 in the presence of PW2 is eminently reasonable, cogent and acceptable. The same does not warrant any interference by invocation of the revisional jurisdiction vested in this Court.

11. The learned counsel for the petitioner then contends that further opportunity may be granted to the petitioner to adduce further evidence. Why should such permission be granted? Remand to facilitate reception of further evidence or reception of further evidence at the appellate or revisional stages cannot be a matter of course. It cannot also be a matter of indulgence by the Courts. The person claiming such remand or reception of further evidence must satisfy the Court that there were satisfactory reasons justifying the inability/failure to produce the relevant evidence at the appropriate stage. No such reasons are at all shown to exist. In these circumstances, I am satisfied that the petitioner has absolutely no justification to explain his inability/failure to produce all relevant inputs before the learned Magistrate. Further evidence need not be received. Remand for reception of such further evidence cannot also be granted.

12. I am, in these circumstances, satisfied that the impugned verdict of guilty and conviction do not warrant interference at all. On the question of sentence, the learned Sessions Judge has shown maximum leniency that can be afforded/

permitted in the given circumstances. The sentence imposed does not also, in these circumstances, warrant interference.

13. In the result:

(a) This revision petition is dismissed.

(b) The impugned verdict of guilty, conviction and sentence of the petitioner u/s 138 of the N.I. Act are upheld.

(c) The learned Magistrate shall take necessary steps to execute the impugned sentence. The petitioner shall appear and his sureties shall produce him before the learned Magistrate at 11 a.m. on 8.11.2004 for execution of the modified sentence. Needless to say, the learned Magistrate shall be at liberty to invoke his powers u/s 446 of the Cr.P.C. against the petitioner and his sureties if the petitioner does not appear before the learned Magistrate, as directed.