

(2012) 02 KL CK 0067

In the High Court Of Kerala

Case No : Criminal Rev. Petition No. 136 of 2012 (B)

E.V. Reghu

APPELLANT

Vs

K.C. Varghese and State of Kerala

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 315, 357(3)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2012) 02 KL CK 0067

Hon'ble Judges : P. Bhavadasan, J

Bench : Single Bench

Advocate : M.T. Suresh Kumar and Sri. Raja Vijayaraghavan By, for the Appellant; K.S. Siva Kumar By R1, Sri. C.B. Sreekumar By R1 and Smt. Seena Ramakrishnan, Public Prosecutor By R2, for the Respondent

Judgement

Justice P. Bhavadasan

1. The accused was prosecuted for the offence punishable u/s 138 of the Negotiable Instruments Act. He was found guilty. He was therefore convicted and sentenced to suffer simple imprisonment till the rising of court and to pay a sum of Rs.1,50,000/-as compensation to the complainant u/s 357(3) of Cr.P.C, with a default clause of simple imprisonment for one month. In appeal, the lower appellate court confirmed the conviction and sentence passed by the trial court.

2. The short case of the complainant is that, Ext.P1 cheque was issued by the accused to discharge a debt of Rs.1,00,000/-due to him. When the cheque was presented for en-cashment, it was returned with endorsement `account closed". A statutory notice issued to the accused was not received by him and returned with endorsement "unclaimed". Since the amount remained unpaid, complaint was laid.

3. Cognizance of the offence was taken. On appearance of the accused, all formalities were complied with. Particulars of the offence were read out to him,

to which he pleaded not guilty and claimed to be tried. The complainant therefore examined himself as PW1 and had Exts.P1 to P6 marked. After the close of the complainant's evidence the accused was questioned u/s 313 Cr.P.C. He denied all the incriminating circumstance brought out against him in the evidence and contended that by using a stolen cheque leaf, a false case was foisted on him. He himself examined as DW1 on the basis of application filed u/s 315 Cr.P.C. and had Ext.D1 marked.

4. Both the courts below, on an appreciation of the evidence in the case, came to the conclusion that the complainant had succeeded in establishing the case against the accused and the defence set up by the accused is false. Accordingly the accused was found guilty and convicted and sentenced as already mentioned.

5. When this revision petition came up for admission today, the Learned Counsel appearing for the revision petitioner pointed out that the revision petitioner does not wish to address this Court on the merits of the case and only prays for some time to pay the compensation amount as ordered by the courts below.

6. However in order to ensure that there is no illegality, irregularity or impropriety in the findings of the courts below, this Court carefully perused the judgments of the courts below.

7. The complainant has examined himself as PW1 and has spoken about his case. The documents produced in support of his case show that when the cheque was presented for en-cashment, it was returned with endorsement account closed. The statutory notice issued to the accused also returned with endorsement unclaimed. The defence set up by the accused was that the complainant and his mother committed theft of furniture, cheque books of various banks and cash from his furniture mart situated at Myladupura Pathananmthitta Municipality and thereafter by making use of that cheque leaf, the complainant foisted a false case on him. He denied any money transaction with the complainant. He produced Ext.D1, a certified copy of the FIR in crime No.709/05 and the complaint dated 05.10.2005 in connection with the alleged theft by the complainant and his mother.

8. Both the courts below came to the conclusion that the defence set up accused is untenable. The evidence shows that the mother of complainant has instituted a complaint u/s 138 of the Negotiable Instruments Act against the accused and which is also pending before the trial court as S.T.135/05. Both the courts below found that there were monetary transactions between the accused and the complainant and defence set up by the accused is unsustainable. Both the courts below independently found that evidence was sufficient to show that the cheque was issued, as contended by the complainant, in discharge of a debt due to him. The findings are entered on appreciation of the evidence in the case and are not shown to be either perverse or unwarranted by the materials on record. No interference in the findings of fault is called for under the revisional jurisdiction of this Court.

9. Conviction has therefore only to stand and sentence being reasonable for the offence committed by the accused, does not call for any interference. Now this Court is to consider the prayer of granting of time for payment of compensation as ordered by the courts below. Considering the amount involved and also the readiness and willingness expressed by the accused to pay the amount, it is felt that a short time can be granted to the revision petitioner to pay the amount.

10. Thus, while confirming the conviction and sentence imposed by the courts below, the revision petitioner is granted four months time from today to pay the compensation amount as ordered by the courts below, failing which the default sentence imposed by the courts below shall immediately take effect.