

(2011) 07 KL CK 0038

In the High Court Of Kerala

Case No : Criminal Rev. Petition No. 1522 of 2002

Jaffer

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 01-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Negotiable Instruments Act, 1881 (NI) — Section 118, 138, 139

Citation : (2013) ALLMR(Cri) 138

Hon'ble Judges : P.Q. Barkath Ali, J

Bench : Single Bench

Advocate : T.A. Unnikrishnan, for the Appellant; Jose Joseph Arayakunnel, for the Respondent

Judgement

P.Q. Barkath Ali, J.—Revision petitioner is the accused in C.C. No. 123/1998 on the file of the Chief Judicial Magistrate, Thodupuzha and appellant in CrI. A. No. 70/2000 on the file of the Sessions Court, Thodupuzha. He was convicted u/s 138 of the Negotiable Instruments Act and sentenced to undergo rigorous imprisonment for two months and to pay a fine of Rs. 62,000/-, in default to undergo rigorous imprisonment for three months by the learned Magistrate by judgment dated April 18, 2000. Out of the fine amount Rs. 60,000/- was ordered to be paid to the complainant as compensation. On appeal by the accused, the lower appellate court by judgment dated September 3, 2002 confirmed his conviction and sentence. The accused has come up in revision challenging his conviction and sentence. The case of the second respondent/complainant, as testified by him as PW1 before the trial court and as detailed in the complaint, was that the accused took a loan of Rs. 60,000/- from him on October 8, 1997 and to discharge that debt, he issued Ext. P1 cheque on November 12, 1997, drawn on the Thodupuzha Branch of Union Bank of India, which when presented for collection was returned dishonoured for want of sufficiency of funds in the account of the accused in the bank and that in spite of notice Ext. P4 dated November 22, 1997, the accused did not repay the amount. Therefore, the

claimant filed the complaint before the trial court u/s 138 of the Negotiable Instruments Act.

2. The accused on appearance before the trial court, pleaded not guilty to the charge u/s 138 of the Negotiable Instruments Act. The complainant was examined as PW1 and Exts. P1 to P6 were marked on his side. When the accused was questioned u/s 313 Cr.P.C. by the learned Magistrate, he submitted that himself and PW1 were jointly doing contract works of Municipality and in connection with that contract work, he issued a blank signed cheque to PW1, which was misused by him and created Ext. P1. No defence evidence was adduced.

3. The trial court, on an appreciation of the evidence, found the accused guilty of the offence punishable u/s 138 of the Negotiable Instruments Act, convicted him thereunder and sentenced him as afore said. On appeal by the accused, the lower appellate court confirmed his conviction and sentence. The accused has come up in revision challenging his conviction and sentence.

4. Heard the learned counsel for the revision petitioner and the learned counsel for the second respondent/complainant.

5. The following points arise for consideration:--

(1) Whether the conviction of the revision petitioner/accused u/s 138 of the Negotiable Instruments Act can be sustained?

(2) Whether the sentence imposed on the revision petitioner/accused is excessive or unduly harsh?

6. Point No. 1:--The complainant as PW1 testified in a convincing manner regarding the transaction before the trial court. No serious discrepancies or contradictions were brought out during his cross-examination. That apart, his evidence is supported by Exts. P1 to P6.

7. The case of the accused as suggested during the cross-examination of PW1 and as stated when questioned u/s 313 Cr.P.C. by the learned Magistrate was that himself and PW1 were jointly doing contract works of Municipality and in connection with that business he issued a signed blank cheque to the complainant, which was misused by him and created Ext. P1. No evidence was adduced by the accused to prove his case. Further as the accused admits execution of Ext. P1, presumption, as envisaged under sections 139 and 118 of the Negotiable Instruments Act, is available for the complainant. No satisfactory evidence was adduced by the accused to rebut the above presumption. Therefore, in my view the trial court as well as the lower appellate court are perfectly justified in believing the evidence of PW1 and convicting the accused u/s 138 of the Negotiable Instruments Act. Therefore, the conviction of the revision petitioner u/s 138 of the Negotiable Instruments Act by the trial court which was confirmed in appeal is upheld.

8. Point No. 2:--As regards the sentence, the trial court has imposed a sentence of rigorous imprisonment for two months and to pay a fine of Rs. 62,000/-, in default to undergo rigorous imprisonment for three months. Out of the fine amount Rs. 60,000/- was ordered to be paid to the complainant. The lower appellate court confirmed his conviction and sentence. The transaction is of the year 1997. Therefore, a lenient view is taken and I feel that sentence of imprisonment till the rising of court and to pay compensation of Rs. 60,000/- with default sentence would meet the ends of justice. In the result, the revision petition is allowed in part. The conviction of the revision petitioner/accused u/s 138 of the Negotiable Instruments Act rendered by the trial court which was confirmed in appeal by the lower appellate court is upheld. The sentence imposed on the revision petitioner is modified to the effect that he is sentenced to undergo imprisonment till the rising of court and to pay compensation of Rs. 60,000/- to the complainant, in default to undergo simple imprisonment for three months.

Three months" time is granted for payment of the compensation. The revision petitioner/accused shall surrender before the trial court on or before July 25, 2011 to suffer the sentence. The amount if any deposited by the revision petitioner shall be adjusted towards the compensation amount to the complainant. His bail bonds are cancelled.