
(2012) 01 KL CK 0102
In the High Court Of Kerala
Case No : Criminal A. No. 1126 of 2005

Jose @ Joseph

APPELLANT

Vs

Joy. K.J. and State of Kerala

RESPONDENT

Date of Decision : 17-01-2012

Acts Referred:

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

Citation : (2012) 01 KL CK 0102

Hon'ble Judges : N.K. Balakrishnan, J

Bench : Single Bench

Advocate : M. Unnikrishna Menon, for the Appellant; A.C. Devy, for R1 and Smt. V.H. Jasmine, Public Prosecutor for R2, for the Respondent

Final Decision : Allowed

Judgement

N.K. Balakrishnan, J.—The complainant is in appeal. The complaint was filed by him alleging that to discharge an existing liability of Rs. 1,10,000/- Ext.P2 cheque dated 15.6.2002 was issued by the accused which on presentment was bounced due to insufficiency of fund. Statutory notice was sent. He received the notice but sent a reply raising false contentions. The amount was not paid. Hence the complaint was filed.

2. Before the court below, the complainant got himself examined as PW1 and Exts.P1 to P10 were marked. No evidence was adduced from the side of the defence. The learned Magistrate acquitted the accused holding that there was no averment in the complaint that the accused had purchased rubber from the firm - K.J. Rubbers. The relevant account books were not produced by the complainant. Hence the court below was not inclined to accept the case put forward by the complainant. So, it was held that the complainant failed to prove that the cheque was issued by the accused in discharge of any debt/liability.

3. Learned counsel for the complainant submits that court below has failed to take into account the fact that Ext.P2 cheque was admittedly signed by the

accused. The presumption under Sec. 139 of the N.I. Act was not discharged by the accused, the learned counsel for the complainant submits. But the learned counsel for the accused would submit that notice dated 10.6.2002 was sent by the accused to the complainant whereas Ext.P2 cheque bears the date 15.6.2002. Thus according to the accused, after receipt of Ext.P3 notice the complainant put the date on the cheque and filled up the same and presented the cheque for the purpose of filing this complaint. Even in Ext.P3 it was stated that earlier there was a transaction between the complainant and the accused with regard to purchase/sale of the rubber. In Ext.P3 it was stated that when rubber business was conducted on credit basis, signed blank cheque leaf was obtained by the complainant from the accused. PW1 has stated in evidence that the accused had purchased rubber sheets from his shop during March 2001 to June 2007 and towards that transaction Rs. 1,69,050/- was due from the accused to the complainant and out of that amount Rs. 59,050/- was paid by the accused in cash and that the balance amount payable by the accused to the complainant was Rs. 1,10,000/-. The complainant also wanted to rely upon Ext.P1 series, the bills alleged to have been issued with regard to the sale of rubber sheets to the accused.

4. The accused contends that these bills do not bear the signature of the accused and so it cannot be used against him. The signatures of the seller and Manager are seen in all these bills. True that these bills were not signed by the accused. It is for the complainant to prove that these bills were issued in the usual course of business and that the purchase bills were issued to the respective purchasers in sequence but the purchase bill book as such was not produced to bring that fact in evidence. Similarly, though the complainant contends that the account books would show that the total amount payable by the accused was Rs. 1,69,050/- the account book was also not produced by the complainant. Had those bill books and the account books been produced and proved, all these contentions could have been averted by the complainant. The contention raised by the accused that when there was transaction earlier a signed blank cheque leaf was issued by him and that was subsequently filled up by the complainant to file this complaint cannot be accepted for a moment, the learned counsel for the complainant submits since that is the usual defence taken by the accused in a case filed under Sec. 138 of N.I. Act. There was no reason why the accused should sign and issue a blank cheque leaf since there could be no difficulty to put the figure or name of the payee in the cheque when it was issued by him. However, in view of the fact that the bill books and the account books were not produced, I find that an opportunity has to be given to the complainant to adduce further evidence in the matter. The accused will also be given an opportunity to adduce further evidence in the matter. The verdict of acquittal is to be set aside for the reasons stated above.

In the result, this Crl. A. is allowed in part. The order of acquittal passed by the trial court is set aside and the matter is remanded to the trial court for fresh disposal. Both parties will appear before the trial court on 22.2.2012. Both

parties are given opportunity to adduce further evidence in the matter. The learned Magistrate will dispose of the matter as expeditiously as possible.