
(2013) 07 KL CK 0059

In the High Court Of Kerala

Case No : Criminal Rev. Petition No. 659 of 2003

K.K. Santhosh

APPELLANT

Vs

C.V. Mathew and State of Kerala

RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:

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

Citation : (2013) 07 KL CK 0059

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : C.A. Chacko and Smt. Soniya M, for the Appellant; Sreejith V.S., Public Prosecutor, for the Respondent

Final Decision : Partly Allowed

Judgement

B. Kemal Pasha, J.—The accused in S.T. No. 2247/1997 of the Judicial First Class Magistrate's Court-II, Thrissur has unsuccessfully challenged his conviction and sentence through Criminal Appeal No. 471/2000 before the Sessions Court, Thrissur. The learned III Additional Sessions Judge (Adhoc-I), Thrissur has confirmed the conviction u/s 138 of the Negotiable Instruments Act, 1881 and modified the sentence, and sentenced the petitioner to undergo simple imprisonment for one month and ordered him to pay an amount of 58,900/- as compensation to the complainant, in default, to undergo simple imprisonment for 45 days more. The case of the complainant is that the petitioner used to purchase items from his shop on credit and towards the discharge of the amounts due from him, the petitioner issued Ext. P2 cheque dated 10.05.1997 for 58,900/- to the complainant, which on presentation, returned dishonoured for insufficiency of funds in the accounts of the petitioner, through Ext. P3 memo. Ext. P5 notice of demand as contemplated u/s 138(b) of the Negotiable Instruments Act was issued. Even after the statutory period, the amount was not paid.

2. On the side of the complainant, PWs 1 to 3 were examined and Exts. P1 to P8

were marked. PW 1 is the complainant, who proved his case. PWs 2 and 3 are Bank Managers, who proved the presentation of the cheque and the return of cheque through Ext. P3 memo for insufficiency of funds in the accounts of the accused. Ext. P8 is the extract of the accounts of the petitioner, which shows that there were no sufficient funds in the accounts of the accused when Ext. P2 cheque came for collection.

3. In fact, the petitioner has no valid contentions at all. This is a case in which an amount of 58,900/- was due to the complainant from the petitioner as on 10.05.1997. Still, the debt has not been discharged. On going through the entire evidence and the concurrent findings entered by the trial court as well as the appellate court, I am satisfied that there is absolutely nothing to interfere with the findings entered by both the courts below on the guilt of the accused for an offence u/s 138 of the Negotiable Instruments Act, and therefore, the conviction passed by the courts below does not call for any interference. At the same time, the learned counsel for the petitioner has prayed for leniency in the question of sentence by pointing out that, if the sentence is reduced to payment of compensation with default sentence, the petitioner may be able to raise funds and to pay the amount. Considering the submissions made by the learned counsel for the petitioner, I am of the view that a sentence of imprisonment till the rising of the court and an order to pay a compensation of 70,000/- within two months, in default, to undergo simple imprisonment for three months will meet the ends of justice in this case.

In the result, this Crl.R.P. is allowed in part by maintaining the conviction and by modifying the sentence as follows:-

The petitioner shall undergo imprisonment till the rising of the court and shall deposit an amount of 70,000/- as compensation payable to the complainant, before the trial court, within two months from today. The petitioner shall surrender before the Judicial First Class Magistrate's Court-II, Thrissur on 23.09.2013 to comply with this order.