
(2012) 11 KL CK 0129
In the High Court Of Kerala
Case No : Criminal A. No. 1469 of 2009

K.P. Murali Nair

APPELLANT

Vs

State of Kerala and M.P. Ramachandran

RESPONDENT

Date of Decision : 20-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 256(1), 82, 83
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2012) 11 KL CK 0129

Hon'ble Judges : V.K. Mohanan, J

Bench : Single Bench

Advocate : Santheep ankarath and Sri. G. Siji, for the Appellant; Laliza T.Y., Public Prosecutor Advocate, for the Respondent

Judgement

1. The complainant in a prosecution for the offence punishable u/s 138 of the Negotiable Instruments Act, 1881 (for short "the N.I. Act") is the appellant since he is aggrieved by the judgment dated 30.5.2009 in S.T. No. 2562 of 2005 of the court of Judicial First Class Magistrate-Ottapalam, by which the learned Magistrate acquitted the accused u/s 256(1) of the Cr. P.C. I have carefully considered the submissions made by the counsel for the appellant and I have perused the judgment impugned in this appeal.

2. In the light of the manner in which I propose to dispose of this appeal and especially considering the safeguard proposed to be incorporated in the order to save the interest of the accused, I am of the view that notice to the 2nd respondent/accused can be dispensed with.

3. Learned counsel for the appellant submitted that the impugned order was passed by the learned Magistrate, when the case was posted for the appearance of the accused and when Sections 82 and 83 of Cr.P.C. steps were pending against him. It is also the submission of the learned counsel that, though the case was posted on 30.5.2009, it was mistakenly noted as 2.6.2009 by the clerk attached to the office of the counsel for the complainant in the trial court and

therefore neither the counsel nor the complainant appeared before the court below on the date of the impugned order. It is the further submission of the learned counsel that since the cheque in question covers an amount of Rs. 25,000/-, one more opportunity may be given to the complainant to prosecute the matter on merit. It is pertinent to note that, no material or evidence is produced by the accused to substantiate his claim with respect to his absence on the date of the impugned order. However, it is relevant to note that though the court has taken cognizance for the offence punishable u/s 138 of the NI Act based upon the complaint preferred by the complainant connected with the dishonour of cheque for an amount of Rs. 25,000/-, there is no decision on merit. Therefore, according to me, one more opportunity can be given to the complainant to prosecute the matter on merit but subject to terms as there was lapse on the part of the complainant/appellant in appearing before the court below on the date of the impugned order.

In the result, this appeal is disposed of setting aside the order dated 30.5.2009 in S.T. No. 2562 of 2005 of the court of Judicial First Class Magistrate-Ottapalam, on condition that the appellant/complainant deposits a sum of Rs. 2,500/- (Rupees Two Thousand Five Hundred only) within one month from today, in the trial court. Accordingly, the appellant is directed to appear before the trial court on 20.12.2012, on which date the learned Magistrate is directed to restore the complaint on file and on his satisfaction that the appellant/complainant depositing the amount as directed above, the learned Magistrate is further directed to proceed with the trial of the case in accordance with the procedure and law and dispose of the same on merit. It is made clear that if there is any failure on the part of the appellant either in appearing before the court on the date fixed for his appearance and depositing the above amount within the time stipulated above, this order will stand vacated and consequently this appeal will also stand dismissed. In case the appellant/complainant complies with the above direction, and on the appearance of the accused, out of Rs. 2,500/-, which would be deposited, a sum of Rs. 1,500/- shall be given to the accused and a sum of Rs. 1,000/- shall be remitted to the State Exchequer. As the case pertains to the year 2005, the learned Magistrate is directed to expedite the trial of the case as expeditiously as possible.

The Criminal Appeal is disposed of as above.