

(2012) 01 KL CK 0064
In the High Court Of Kerala
Case No : Criminal A. No. 520 of 2005

Krishnarajan Alias Sankara Narayanan

APPELLANT

Vs

K.K. Narayanan

RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

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

Citation : (2012) 3 Crimes 493

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

Bench : Single Bench

Advocate : Madhu Radhakrishnan and Sri. P. Radhakrishnan, for the Appellant;
P. Vijaya Bhanu for R, R1 and Sri. P.M. Rafiq, for the Respondent

Final Decision : Allowed

Judgement

N.K. Balakrishnan, J.—The complainant is in appeal. His complaint filed u/s 138 of Negotiable Instruments Act ended in acquittal. The case of the complainant is that the accused had borrowed from him a sum of Rs. 1 lakh in August - 2002 and to discharge that debt Ext.P1 cheque was issued which on presentment was bounced due to insufficiency of funds. On receipt of the dishonoured memo, statutory notice was sent. It was acknowledged by the accused but he failed to send any reply nor did he pay the amount. Hence the complaint was filed.

2. The complainant was examined as PW.1 and Exts.P1 to P6 were marked.

3. The learned Magistrate did not place reliance on the evidence given by PW.1 since according to the learned Magistrate there was inconsistency in the case set-up by him in the complaint and in the evidence tendered by PW.1 with regard to the lending of money to the accused. It was also observed by the court below that though the complainant contends that a Promissory Note was also executed by the accused, the complainant has not chosen to file a suit for recovery of the amount. Hence the court below found that if the accused had executed a promissory note as alleged by the complainant, then certainly he would have filed a suit

against the accused for realisation of the amount. But he did not file any suit. Hence, the court below disbelieved the evidence given by PW.1 regarding the transaction averred by him. Hence the accused was acquitted.

4. The learned counsel for the complainant would submit that the court below did not approach the issue in the correct perspective. Though it was stated in the complaint that he had lent a sum of Rs. 1 lakh to the accused, as it was lent on different occasions, that was only clarified or explained when he was examined in court. The fact that he could not give the date when he had paid the amount to the accused is no reason to say that he had not lent money to the accused. The fact that PW.1 had sufficient fund to advance a sum of Rs. 1 lakh to the accused can be discerned from the evidence given by PW.1. It was pointed that there is no evidence to show that he had sold his shop situated in Chennai to one Rajan and then he had obtained money. The accused contends that even if he had obtained money by the sale of a shop, there is no reason to hold that he would part with the entire amount to the accused. But the fact that the complainant and the accused are neighbours and were classmates and friends was not seriously disputed by the defence.

5. It is also pertinent to note that on receipt of the statutory notice, the accused did not send any reply refuting the allegations made in the notice. According to the learned counsel, it would unfold the fallacy of the contention belatedly advanced by the accused. It is also submitted by the learned counsel for the complainant that PW.1 has deposed in clear terms that the accused signed Ext.P1 cheque in his presence. That was not seriously assailed by the accused. The fact that a promissory note was executed by the accused was a point ferreted out in cross-examination by the defence. The learned counsel for the complainant would submit that the findings made by the court below that had there been a promissory note, the complainant would have filed a suit for realisation of the amount is unacceptable. It is pointed out that the amount to be spent for filing a suit is more. The time that may be consumed for getting a decree and the procedural hurdles in getting the decree executed should not have been overlooked by the trial court. It is not necessary that a suit should be filed based on the promissory note when the remedy by filing a complaint u/s 138 of N.I. Act is available to him. Therefore, the learned counsel for the complainant would submit that, the two reasons projected by the court below to give a verdict of acquittal is unsustainable in law.

6. It is further submitted by the learned counsel that the suggestion made to PW.1 and the statement given by the accused when examined u/s 313 Cr.P.C. is that cultivation of vegetables was jointly done by PW.1 and the accused and during that time a signed blank cheque was given by the accused to the complainant. It is inconceivable why should there be handing over of a blank cheque leaf for the purpose of conducting of a joint cultivation of vegetables. That also according to the learned counsel for the complainant is a strong circumstance to hold that the case put forward by the accused is bereft of any

merit.

7. It was vehemently argued by the learned counsel for the accused that the inconsistency in the evidence given by PW1 regarding lending of money cannot be ignored by the court while appreciating the acceptability of the case projected by the complainant. It cannot be found that the explanation given by PW1 was irreconcilable with the averments in the complaint. Only because he could not say the dates on which the amount was paid it cannot be said that the money was not lent. On going through the entire evidences it can be discerned that he had lent money on a few occasions and that the total amount so lent was Rs. 1 lakh.

8. The other ground projected by the learned Magistrate that had there been a promissory note the complainant would have filed a suit for realisation of the amount also is not a reason to give a verdict of acquittal in a case filed under Sec. 138 of N.I.Act. The learned counsel for the accused would submit that there was no averment in the complaint that the accused had executed a promissory note and so the evidence so given by PW1 cannot be accepted. Over much importance need not be given to the evidence regarding the execution of a promissory note. The fact that Ext.P1 cheque was issued by the accused for discharging an existing debt could be proved by PW1. The further fact that no reply was sent to the notice under the proviso (b) to Sec. 138 of N.I. Act also looms large in this case and would go a long way against the case advanced by the accused. The approach made by the learned Magistrate is seen to be wholly erroneous and as such the verdict of acquittal is liable to be set aside.

In the result, this appeal is allowed. In reversal of the verdict of acquittal, the accused is found guilty of the offence under Sec. 138 of N.I. Act and he is convicted thereunder. He is sentenced to undergo imprisonment till the rising of the court and to pay Rs. 1 lakh as compensation to the complainant. In default of payment of the compensation, he will undergo S.I. for three months. The accused/respondent is given three months time to pay the amount of compensation and also to appear before the learned Magistrate to receive the sentence of imprisonment till the rising of the court.