(2013) 09 KL CK 0049

In the High Court Of Kerala

Case No : Criminal A. No. 120 of 2004

M.K. Raghavan APPELLANT

Vs

K.P. Karunakaran and State of Kerala RESPONDENT

Date of Decision : 02-09-2013

Acts Referred:

Citation : (2013) 09 KL CK 0049

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : K.V. Sohan and Sri. B. Premnath, for the Appellant; P.S. Binu, Smt. Bindu George for R1 and Smt. Sheeba M.T., Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B. Kemal Pasha, J.—This appeal on special leave has been preferred by the complainant in C.C. No. 143 of 2002 of the Judicial First Class Magistrate''s Court-III Kannur, challenging the acquittal of the accused u/s 255(1) Cr.P.C. The case before the court below was as a result of a private complaint filed by the appellant herein as complainant, against the first respondent herein as accused, alleging an offence punishable u/s 138 of the Negotiable Instruments Act. The case of the appellant is that the first respondent had borrowed an amount of 80,000/- from him, in discharge of which liability, the first respondent issued Ext. P2 cheque dated 30.4.2001 for 80,000/-. Ext. P2 cheque, when presented, returned dishonoured for insufficiency of funds in the accounts of the first respondent. Ext. P4 notice as contemplated u/s 138(b) of the N.I. Act was issued. On receipt of the notice, the first respondent caused to issue a reply thereby, denying the transactions with the complainant. As the amount was not paid, the complaint was filed.

2. On the side of the complainant, PWs1 to 3 were examined and Exts. P1 to P8 were marked. On the side of the first respondent, DW1 was examined and Exts. D1 and D2 were marked. From the beginning, the first respondent had resorted to a specific case that he was conducting a toddy shop in partnership with PW3

and as he had borrowed an amount of 5,000/- from PW3 towards the expenses for conducting the toddy shop, and that PW3 had obtained a blank signed cheque leaf and also a blank signed stamp paper for 50/-, from him. Due to the misappropriation and criminal breach of trust committed by PW3 in the business, their business relationship had strained and the original licensee of the toddy shop from whom they had jointly taken the toddy shop, removed PW3 from the business and permitted the first respondent alone to conduct the toddy shop. According to the first respondent, the blank signed cheque leaf which PW3 had obtained from him was handed over by PW3 to the appellant and they colluded together and presented the cheque, got it dishonoured and filed the complaint.

3. It seems that the original complainant has kept away from the box and has avoided his examination before the court below. A vague explanation was given by his son who was examined as PW1 that the complainant was laid up due to rheumatism. This is a case in which it was specifically contended by the first respondent that the cheque was not supported by consideration and it was not issued in discharge of a legally enforceable debt or liability. In such a case, positively and in all probability, the complainant ought to have mounted the box and deposed about the circumstances in which the cheque was issued. Such an evidence relating to the original transaction is lacking in this case.

4. This is a case in which on getting the notice u/s 138(b) of the N.I. Act, the first respondent had promptly issued a reply thereby taking the very same contentions which were resorted to by him when he was examined u/s 313 Cr.P.C. It is strange to note that the complainant has cited PW3 and examined PW3 on the side of the complainant to show that no such blank cheque leaf or blank signed stamp paper were obtained from the first respondent by PW3. On going through the versions of PW3, it can be seen that PW3 has admitted that he along with the first respondent were jointly conducting the toddy shop, after obtaining it from the original licensee and after some time there occurred difference of opinion between them and ultimately he was removed from the business and the original licensee permitted the first respondent alone to continue the conduct of the toddy shop. It is also the case of PW3 that he and the first respondent became in inimical terms. According to the first respondent, he had no business transactions with the appellant and he had never owed any money to the appellant. According to PW1, his father who was the complainant, and the first respondent were doing business in gold jointly and they used to purchase gold from Banks in auction. As observed by the court below, in such a case, the complainant could have very well proved such business relationship by producing documentary evidence from such Banks. No such documentary evidence is produced to show that they had any such business transactions together. It is the specific case of PW1 that Ext. P2 cheque was written and signed by the first respondent in his presence at the house of the first respondent. According to him, all the hand writings in the cheque were made by the first respondent. During his examination u/s 313 Cr.P.C., the first respondent had prayed before the court below to send the cheque for examination by a hand

writing expert to prove that the hand writings in the cheque were not made by him. The cheque was duly sent for examination by the hand writing expert and Ext. D2 report came by specifically stating that the hand writings in the cheque were not made by the first respondent. Matters being so, I do not find anything to interfere with the impugned judgment passed by the court below. The court below has appreciated the evidence in the case in its correct perspective and has arrived at the correct conclusion. There is absolutely nothing to interfere with the acquittal passed by the court below u/s 255(1) Cr.P.C. This appeal is devoid of merits, and is only to be dismissed, and I do so.

In the result, this Criminal Appeal is dismissed.