(2012) 01 KL CK 0091

In the High Court Of Kerala

Case No : Criminal A. No. 1280 of 2005

M/s. Malayalam Agencies — APPELLANT

Vs

State of Kerala and Wilson — RESPONDENT

Date of Decision : 18-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 255(1)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2012) 01 KL CK 0091

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

Bench : Single Bench

Advocate : N. Subramaniam and Sri. M.S. Narayanan, for the Appellant; Public Prosecutor for R1, Smt. V.H. Jasmine for R2 and Sri. Wilson Urmese, for the Respondent

Final Decision : Allowed

Judgement

N.K. Balakrishnan, J.—The complainant, a partnership firm is the appellant. The complaint filed by the firm under Sec. 138 of N.I. Act ended in acquittal under Sec. 255(1) of Cr.P.C. The case of the complainant is that to discharge the liability due to the complainant Ext.P1 cheque for Rs. 25,139/- dated 16.5.2000 was executed by the accused. When it was presented for encashment, it was dishonored on the ground of insufficiency of fund. On receipt of the memo, statutory notice was sent. No reply was sent by the accused. Hence, the complaint was filed.

2. The Power of Attorney Holder of the complainant company was examined as PW1 and Exts.P1 to P6 were marked. Ext.P6 is the copy of power of attorney.

3. When PW1 was in the witness box, the main case advanced by the defence was that the accused was not the proprietor of M/s. Thottappillil Traders and that Ext.P1 cheque was not drawn on the account maintained by the accused and that it was not signed by the accused also. But PW1 asserted that the cheque was signed and the seal was affixed by the accused himself. But that version was not

controverted by the defence. The learned Magistrate acquitted the accused holding that the complainant did not prove that Ext.P1 was drawn on an account maintained by the accused. Ext.P2, the dishonour memo shows that Ext.P1 was dishonored only on the ground of insufficiency of fund and not on any other ground. If Ext.P1 was not signed by the account holder then it would have been specifically noted in Ext.P2. That was not done. Therefore, the accused cannot legitimately contend that Ext.P1 was not actually drawn by the accused on an account maintained by him. That apart, when statutory notice was sent no reply was sent by the accused. Ext.P4 is the copy of the notice and Ext.P5 is the postal acknowledgment of the accused.

3.1 An attempt was made by the defence to contend that the account No. 2017 was not existing and that it was existing in the name of somebody else. The Manager of the Federal Bank which was the Drawee bank was summoned for that purpose. At first he stated that he has not brought the account opening form pertaining to Cash Credit Account No. 2017. He stated that he has produced the account opening form of S.B.A/c No. 2017. But it is important to note that Ext.P1 was drawn on an account - CC.20127 and not 2017. Therefore, the accused cannot contend that CC No. 20127 was not an account maintained by the accused. In such circumstances, the order of acquittal passed by the court below on that sole ground is not correct. The complainant has to summon the Officer of the Federal Bank to produce the account opening form and other account particulars of CC. No. 20127.

In the result, this Criminal Appeal is allowed in part. The verdict of acquittal given by the court below is set aside. The case is remanded to the Additional CJM Court, Erakulam for fresh disposal in accordance with law. Both parties are given opportunity to adduce further evidence in the matter. The parties will appear before the Additional CJM Court, Ernakulam on 16.02.2012. The learned Magistrate will see that, the case is disposed of at the earliest, at any rate, within three months from that date.

