
(2015) 03 KL CK 0024
In the High Court Of Kerala
Case No : Criminal Rev. Pet. No. 55 of 2015

M.V. Saseendran

APPELLANT

Vs

Sreeram Transport Finance Co. Ltd. and Others

RESPONDENT

Date of Decision : 06-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 357(1)(b), 357(3)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2015) 03 KL CK 0024

Hon'ble Judges : K. Ramakrishnan, J.

Bench : Single Bench

Advocate : Jeswin P. Varghese and G. Vidya, for the Appellant; C. Harikumar and C.B. Anuroopa, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

K. Ramakrishnan, J.—Accused in C.C. No. 25/2011 on the file of Judicial First Class Magistrate Court-IV, Kozhikode, is the revision petitioner herein.

2. The case was taken on file on the basis of a private complaint filed by the first respondent - complainant against the revision petitioner alleging offence under section 138 of the Negotiable Instruments Act (herein after called the Act).

3. The case of the complainant in the complaint was that revision petitioner availed a vehicle loan and there was an amount of Rs. 53,000/- due and in discharge of that liability, he had issued Ext. P2 cheque, which when presented was dishonoured for the reason funds insufficient evidenced by Ext. P3 dishonour memo, and this was intimated to the complainant by Ext. P4 intimation letter. Complainant issued Ext. P5 notice vide Ext. P6 postal receipt intimating the dishonour and demanding payment of the amount and the same was received by the revision petitioner evidenced by Ext. P7 postal acknowledgment. The revision petitioner had not paid the amount. So, he had committed the offence punishable under section 138 of the Act. Hence the complaint.

4. When the revision petitioner appeared before the court below, the particulars of offence were read over and explained to him and he pleaded not guilty. In order to prove the case of the complainant, the power of attorney holder of the complainant evidenced by Ext. P1 Power of Attorney was examined as PW 1 and Exts. P1 to P9 were marked on their side. After closure of the complainant's evidence, the revision petitioner was questioned under section 313 of the Code of Criminal Procedure (herein after called the Code) and he denied all the incriminating circumstances brought against him in the complainant's evidence. He had further stated that he had not issued any cheque as claimed by the complainant and the blank signed cheque given at the time of borrowing the amount as security was misused and the present complaint was filed. No defence evidence was adduced on his side to prove his case. After considering the evidence on record, the court below found the revision petitioner guilty under section 138 of the Negotiable Instruments Act and convicted him thereunder and sentenced him to undergo simple imprisonment for three months and also to pay Rs. 63,000/- as compensation to the complainant in default to undergo simple imprisonment for two months under section 357(3) of the Code of Criminal Procedure. Aggrieved by the same, the revision petitioner filed Crl. Appeal No. 498/2013 before the Sessions Court, Kozhikode, which was made over to IInd Additional Sessions Court, Kozhikode, for disposal. The learned Additional Sessions Judge by the impugned judgment allowed the appeal in part, confirming the order of conviction and but enhancing the compensation to Rs. 65,000/- and reduced the substantive sentence to imprisonment till rising of court, which is being challenged by the revision petitioner by filing the above revision.

5. When the revision came up for admission, the counsel for the revision petitioner wanted only time. Since the respondent has already appeared and this court felt that the compensation cannot be granted with out imposing fine in view of the Hon''ble Supreme Court decision to correct that illegality, the revision is admitted and heard and disposed of after hearing both sides today itself.

6. The counsel for the revision petitioner submitted that the courts below have not properly appreciated the evidence and compensation could not have been awarded by the court below and that should not have been enhanced from the amount ordered by the trial court in the appeal filed by the revision petitioner.

7. The concurrent findings of the courts below were supported by the counsel for the first respondent and the public prosecutor.

8. On going through the evidence, this court felt that there is no illegality committed by the court below in coming to the conclusion that the revision petitioner had issued Ext. P2 cheque in the discharge of a liability for the amount mentioned in Ext. P9 accounts statement maintained by the complainant concern in respect of the revision petitioner's transaction and the revision petitioner had no case that the formalities have not been complied with and he had paid the amount after receipt of the notice. So, under the circumstances, courts below were perfectly justified in convicting the revision petitioner for the offence under

section 138 of the Act and the concurrent findings of the courts below on this aspect do not call for any interference.

9. As regards the sentence is concerned, though the court below had sentenced him to undergo simple imprisonment for three months and also to pay Rs. 63,000/- as compensation in default to undergo simple imprisonment for two months under section 357(3) of the Code of Criminal Procedure, the appellate court had reduced the substantive sentence to imprisonment till rising of court but enhanced the compensation to Rs. 65,000/-.

10. In the decision reported in Somnath Sarkar Vs. Utpal Bahu Mallick (2013 (4) KLT 350 (SC)), it has been observed that court cannot order compensation under section 138 of the Negotiable Instruments Act, but court has got power to impose double the cheque amount as fine and if the fine amount is quantified, compensation can be awarded out of the fine amount invoking the power under section 357(1)(b) of the Code of Criminal Procedure, the order passed by the court below directing payment of compensation is not proper. However since the appellate court had reduced the substantive sentence there is nothing wrong in enhancing the fine amount. So, the direction to pay compensation is set aside, while confirming the amount fixed, which can be treated as fine and the sentence is modified as follows:-

The revision petitioner is sentenced to undergo imprisonment till rising of court and also to pay a fine of Rs. 65,000/- in default to undergo simple imprisonment for two months. If the fine amount is realised, the same be paid to the complainant as compensation under section 357(1)(b) of the Code of Criminal Procedure. The counsel for the revision petitioner prayed six months time for payment of the amount. However, considering the fact that the case is of the year 2010, and also the amount involved, this court feels that the time sought for is on the higher side and five months time can be granted to the revision petitioner to pay the amount. So, the revision petitioner is granted time till 06.08.2015 to pay the amount. Till then the execution of the sentence is directed to be kept in abeyance. If any amount has been deposited for suspending the sentence as directed by the Sessions Court, that is directed to be adjusted towards the fine imposed and he need to pay only the balance amount within the time mentioned above. With the above modification of the sentence alone, the revision petition is allowed in part and disposed of accordingly. Office is directed to communicate this order to the concerned court immediately.