
(2014) 02 KL CK 0174

In the High Court Of Kerala

Case No : Crl. Rev. Pet. No. 1348 of 2013

N.K. Suresh Kumar

APPELLANT

Vs

N. Abdulgafoor and The State of Kerala

RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

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

Citation : (2014) 02 KL CK 0174

Hon'ble Judges : M.L. Joseph Francis, J

Bench : Single Bench

Advocate : Bimala Baby, Advocate for the Appellant; Santharam. P., Advocate for R1, Smt. Rekha Aravind, Advocate for R1 and Smt. Seena Ramakrishnan, Public Prosecutor, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

M.L. Joseph Francis, J.—This Revision petition is filed by the accused in S.T.C. No.1235 of 2008 on the file of Judicial First Class Magistrate Court-II, Perambra challenging the conviction and sentence passed against him for the offence punishable u/s 138 of N.I. Act. The cheque amount was Rs. 75,000/-. In the Trial Court, the accused was sentenced to undergo simple imprisonment for three months and to pay Rs. 1,00,000/- as compensation to the complainant, in default to undergo simple imprisonment for a further period of one month. The appeal filed as Criminal Appeal No.285 of 2011 before the First Additional Sessions Court, Kozhikode against that conviction and sentence was allowed in part. The conviction was confirmed and the sentence of simple imprisonment imposed on the accused was set aside and was sentenced to pay a fine of Rs. 1,00,000/- in default to undergo simple imprisonment for a period of one month. If fine amount is realised, it will be paid to the complainant as compensation u/s 357(1) of the Code of Criminal Procedure. Against that judgment, the appellant/accused filed this Criminal Revision Petition.

2. I heard the learned counsel for the revision petitioner, the learned counsel for the complainant and the learned public prosecutor.

3. The learned counsel appearing for the revision petitioner reiterated the same contention raised before the Trial Court and the appellate court.

4. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant, that the complainant had validly complied with clauses (a) and (b) of the proviso to Section 138 of the N.I. Act and that the Revision petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the conviction. The said conviction has been recorded after a careful evaluation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the conviction so recorded concurrently by the courts below and the same is hereby confirmed.

5. In the decision reported in Damodar S. Prabhu Vs. Sayed Babalal H., , it was held that in a case of dishonour of cheques, compensatory aspect of the remedy should be given priority over the punitive aspect. Considering the facts and circumstances of the case, I am of the view that sentencing the accused to pay a fine of Rs. 75,000/- would meet the ends of justice. Accordingly the accused is sentenced to pay a fine of Rs. 75,000/- u/s 138 of the NI Act. The said fine shall be paid as compensation u/s 357(1) of Cr.P.C. to the complainant. The Revision petitioner is permitted either to deposit the said fine amount before the Court below or directly pay the compensation to the complainant within eight months from today and to produce a memo to that effect before the Trial Court in case of direct payment. If he fails to deposit or pay the said amount within the aforesaid period, he shall suffer simple imprisonment for three months by way of default sentence. The amount if any deposited in the trial court by the accused can be given credit to.

6. In the result, this Revision petition is disposed of confirming the conviction entered by modifying the sentence imposed on the revision petitioner.