
(2014) 10 KL CK 0182
In the High Court Of Kerala
Case No : Crl. Rev. Pet. No. 1839 of 2012

P.K. Gireesh

APPELLANT

Vs

Sree Gokulam Chits and Finance Co. (P) Ltd.

RESPONDENT

Date of Decision : 17-10-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Negotiable Instruments Act, 1881 (NI) — Section 118, 138, 139

Citation : (2014) 10 KL CK 0182

Hon'ble Judges : K. Ramakrishnan, J

Bench : Single Bench

Advocate : P.V. Kunhikrishnan, Advocate for the Appellant; A. Sreekala, Advocate and Seena Ramakrishnan, Public Prosecutor, Advocate for the Respondent

Judgement

K. Ramakrishnan, J.—Accused in S.T. No. 708/12 on the file of Judicial First Class Magistrate Court, No. -II (Mobile), Kozhikode is the revision petitioner herein.

2. The above case was taken on file on the basis of a private complaint filed by the complainant against the petitioner alleging offences under Section 138 of Negotiable Instruments Act (hereinafter called "the Act").

3. The case of the prosecution in nutshell was that the accused borrowed a sum of Rs. 3,00,000/- and in discharge of that liability, he had issued Ext. P4 cheque. When this was presented for collection, the same was dishonoured for the reason "funds insufficient" vide Ext. P5 memo dated 06.04.2010. The complainant issued Ext. P6 notice on 05.05.2010, demanding payment of the amount and intimating the dishonour on the same day vide Ext. P7 postal receipt and the same was received by the accused on 06.05.2010 evidenced by Ext. P8 Postal acknowledgment. He had not paid the amount. So, he had committed the offence punishable under Section 138 of the Act. When the accused appeared before the court below, the particulars of offences were read over and explained to him and he pleaded not guilty. In order to prove the case of the complainant, the

authorized agent of the complainant was examined as PW 1 and Exts. P1 to P8, P9 series, P10 series were marked on the side of the complainant. After closure of the complainant's evidence, the accused was questioned under Section 313 of Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the evidence. He had further stated that he had not committed any offence, the amount is not actually due, the blank signed cheque given as security was misused and the present complaint was filed. After considering the evidence on record, the court below found the revision petitioner guilty under Section 138 of the Act and convicted him thereunder and sentenced him to undergo imprisonment till rising of the court and also to pay a compensation of Rs. 3,00,000/- with 10% interest from the date of the cheque till payment in default to undergo simple imprisonment for three months. Aggrieved by the same, the revision petitioner filed Crl. Appeal No. 174/12 before the Sessions Court, Kozhikode which was made over to Special Additional Sessions Judge (Marad Cases), Kozhikode for disposal and the learned Additional Sessions Judge by the impugned judgment dated 28.04.2012 allowed the appeal in part by confirming the order of conviction and imprisonment till rising of court, but quantified the compensation payable at Rs. 3,50,000/- with default sentence of three months. Aggrieved by the same, the present revision has been filed.

4. Since the first respondent appeared through Counsel, this court felt that the revision can be admitted and can be disposed of today itself after hearing both sides. So, the revision is admitted and heard today itself.

5. The Counsel for the revision petitioner submitted that the execution of the cheque has not been proved and the case of the accused is more probable and he rebutted the presumption and the courts below were not justified in convicting him for the offence alleged.

6. On the other hand, the Counsel for the first respondent submitted that both the courts concurrently found that the offence was committed which requires no interference.

7. Heard the Public Prosecutor also.

8. The case of the complainant was that the accused was a subscriber to two Chitties and in discharge of the amount due under the Chitties, he had issued Ext. P4 Cheque. Exts. P1 to P3 and P9 series, P10 series were produced for proving that fact of the amount due from the accused in the chitty transaction. The evidence of PW 1 will go to show that that the amount mentioned in the cheque was really due as per account statement and the accused had given the cheque in partial discharge of the liability. Though the accused had a case that it was given a blank signed cheque as security when he bid the chitty, no evidence was adduced on his side to prove this fact. So, under the circumstances, courts below were perfectly justified in relying on the evidence of PW 1's oral evidence and the documentary evidence produced and also the presumptions under Section 139 and 118 of the Act and coming to the conclusion that the accused

had issued Ext. P4 cheque in partial discharge of the liability from him to the complainant concern. The accused had no case that the formalities have not been complied with. Once it is proved by the complainant that in spite of notice issued, if the accused had not paid the amount within fifteen days of receipt of notice, then, the offence under Section 138 of the Act is complete. So, the court below was perfectly justified in convicting the appellant for the offence under Section 138 of the Act which was rightly confirmed by the appellate court. Since there is no illegality has been committed by the courts below in convicting the appellant, this court do not find any reason to interfere with the concurrent findings of the court below on this aspect.

9. As regards the sentence is concerned, the court below had awarded only imprisonment till rising of court and the compensation awarded by the court below was modified and fixed as Rs. 3,50,000/- by the appellate court, So, there is nothing to interfere with the sentence imposed by the court below as well as maximum leniency has been shown in this regard as well. If the revision petitioner pays the amount to the complainant and produces proof of such payment before the court below and present the representatives of the respondent company to acknowledge such payment, and if the court is satisfied with the proof of such payment, then, that can be treated as substantial compliance of the payment of compensation and as mentioned in Beena Vs. The Union of India (UOI) and The Central Bank of India, and Sivankutty Vs. John Thomas, , the factum of payment can be recorded in the respective registers and permit the petitioner to undergo the imprisonment till rising of court. One month time is given for payment of the amount. Till then, the execution of warrant is directed to be kept in abeyance.

With the above direction and observation, the appeal is dismissed.