

(2005) 09 KL CK 0062

In the High Court Of Kerala

Case No : Criminal Revision Petition No. 2235 of 2005

P.K. Thankamma

APPELLANT

Vs

Sundaresan T.S. and Another

RESPONDENT

Date of Decision : 28-09-2005

Acts Referred:

Evidence Act, 1872 — Section 114

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2006) 1 ALD(Cri) 51 : (2007) 2 BC 559 : (2006) CriLJ 843 : (2006) 1 KLJ 927

Hon'ble Judges : Sasidharan Nambiar, J

Bench : Single Bench

Advocate : E.S.M. Kabeer, for the Appellant;

Judgement

M. Sasidharan Nambiar, J.—Petitioner was concurrently convicted and sentenced for the offence u/s 138 of N.I. Act. He. is challenging conviction and sentence in the revision contending that Courts below did not properly appreciate the evidence.

2. Ext P.1 cheque dated 15-9-1997 for Rs. 35.000/- was admittedly drawn in the account maintained by revision petitioner. First respondent presented it for encashment. It was dishonoured under Ext. P2. First respondent sent Ext. P4 notice demanding the amount, covered by dishonoured cheque. Ext. P6 original registered notice was returned unclaimed. Complaint was lodged thereafter, Petitioner pleaded not guilty. First respondent was examined as P.W. 1, Manager of the bank was examined as P.W. 2. Postman was examined as P.W. 3, Petitioner did not adduce any evidence. Learned Magistrate and in appeal learned Additional Sessions Judge appreciated the evidence at length and found that Ext. P1 cheque was issued towards discharge of existing liability. What was contended by petitioner before the Courts below was that advocate Mohanan is the brother of first, respondent and he was conducting four cases of petitioner and towards fees of Rs. 12.000/-. Advocate Mohanan obtained a signed blank cheque and

subsequently when petitioner was not satisfied with the conduct of the case by the counsel, he changed the vakalath and because of that enmity Advocate Mohanan handed over the cheque entrusted by petitioner to him and got the cheque presented through first respondent and complaint was lodged. Apart from the allegation, no evidence was adduced in support of the case. Learned Magistrate and learned Additional Sessions Judge appreciated the evidence in the proper perspective and found that Ext. P1 cheque was issued towards discharge of existing liability. I find no reason to interfere with that finding as nothing was pointed out to challenge that finding.

3. Fact that Ext. P1 cheque was dishonoured for want of sufficient funds was proved by Ext. P2 dishonoured memo as well as Ext. P7 ledger extract. That aspect was also not challenged. Only other contention raised was that there was no notice as provided u/s 138(b) of N.I. Act. Ext. P6 is the original registered notice returned unclaimed. Ext. P4 is the office copy. Ext. P6 contains the endorsement of postman that intimation was given. It was not disputed that address of petitioner shown in Ext. P6 was the correct address. Evidence of P.W. 3 establish that intimation was given to petitioner and in spite of intimation petitioner did not receive the notice. Petitioner did not adduce any evidence to rebut presumption available u/s 114 of the Evidence Act that all official acts are presumed to be carried out regularly and properly. Moreover, evidence of P.W. 3 establish that fact. Conviction of petitioner for the offence u/s 138 of N.I. Act is perfectly legal, regular and proper and warrants no interference.

4. Learned Counsel argued that petitioner has been in jail pursuant to the dismissal of appeal, for the last 18 days and sentence may be modified to imprisonment for the period he had already undergone and sufficient compensation may be awarded. Even though notice to first respondent was sent and served he did not appear. Interest of justice will be met if sentence is modified providing adequate compensation to first respondent.

5. Revision is partly allowed. Maintaining conviction for the offence u/s 138 of N.I. Act and in Supersession of sentence awarded by learned Magistrate and confirmed by learned Additional Sessions Judge, petitioner is sentenced to simple imprisonment for the period he had already undergone and compensation of Rs. 41,000/- to be paid within one month and in default simple imprisonment for three months. If the petitioner is in custody he is to be released, if he is not wanted in any other case. Learned Magistrate is directed to execute the sentence after one month from this date.