

(2009) 04 KL CK 0082
In the High Court Of Kerala
Case No : Criminal A. No. 15 of 2008

Purushothaman

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 461(1), 462
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2009) 3 CivCC 247 : (2010) 5 RCR(Criminal) 733

Hon'ble Judges : K.P. Balachandran, J

Bench : Single Bench

Advocate : Jobi Jose Kondody, for the Appellant; K. Shaj, B. Balraj, S. Sajju and Mr. P. Ravindra Babu, PP, for the Respondent

Final Decision : Allowed

Judgement

K.P. Balachandran, J.—The complainant in C.C.No. 1137/2004 on the file of the Judicial First Class Magistrate's Court-II (Mobile), Kottayam is the appellant. He challenges in this appeal the acquittal of the second respondent of offence punishable u/s. 138 of the N.I.Act vide judgment passed by the first appellate court in Crl.A.No.552/06 in reversal of the judgment of conviction and sentence passed by the Magistrate in C.C.No. 1137/2004.

2. The first appellate court acquitted the second respondent holding that the trial of offence by the learned Magistrate namely the Judicial First Class Magistrate-II (Mobile), Kottayam was without jurisdiction and the conviction and sentence therefore is vitiated in view of S. 461(1) of the Cr.P.C.

3. The finding that the learned Magistrate was not having jurisdiction was entered into by the first appellate court on the basis of the decision of this Court in Ahammedkutty Haji Vs. State of Kerala, . The decision of this Court in Ahammedkutty Haji's case is one rendered without following the decision of the Apex Court in Bhaskaran v. Balan, 1999 (3) CCC 385 (S.C.) : 1999(2) ACJ 501 (S.C.) : 1999(3) KLT 440 (SC). In the light of the decision of the Apex Court, the

decision of this Court was not to be followed especially when there was specific finding in the decision rendered by the Apex Court to the effect that the place from where notice was issued in writing to the drawer of the cheque demanding payment of the cheque amount also is a place where part of cause of action arises. Hence, the finding of the first appellate court that the Trial Court was not having jurisdiction for the reason that it is only giving of notice in writing to the drawer of the cheque demanding payment of the cheque amount that has taken place within the territorial jurisdiction of the Magistrate and therefore, there is no jurisdiction for the Magistrate to take cognizance of the offence is incorrect and deserves to be set aside. Further, it is also worthy to note that the learned Magistrate had tried and disposed of the case on merits. Objection to territorial jurisdiction is a contention that has to be raised at the earliest point of time and not after conviction is entered into by the Magistrate who tried the offence without any objection raised by the accused as regards its jurisdiction. Further, it is worthy to note that u/s. 462 of Cr.P.C. the finding sentence or order of any criminal court cannot be set aside merely on the ground that the enquiry or trial has taken place in a wrong sessions division, district, sub-division or other local area unless it appears that such error has in fact occasioned a failure of justice. Even the counsel for the second respondent has no case that failure of justice has occasioned by reason of trial having taken place in the court of the Judicial First Class Magistrate-II-(Mobile), Kottayam. For all the above reasons the judgment of the first appellate court deserves to be set aside.

4. All the same, it is argued by the counsel for the second respondent that the first appellate court has not considered the case on merits and it is only based on decision in Ahammedkutty Haji's case (cited supra) that the lower appellate court reversed the conviction and sentence entered into by the Magistrate and acquitted the second respondent and that therefore, the appeal filed before the first appellate court deserves consideration on merits at the hands of the first appellate court. The submission made by the counsel for the second respondent is sound and has to be accepted. The appellant also has no grievance on that count.

5. In the result, I set aside the judgment of the lower appellate court in CrI.A.No.552/06 assailed in this appeal and remit the case back to the lower appellate court for consideration of the appeal on merits. The parties or their counsel shall appear before the lower appellate court positively on 22.05.2008 and the appellate court shall dispose of the appeal positively within one month from the said date.

6. This appeal is thus allowed by way of remand.