

(2011) 06 KL CK 0225

In the High Court Of Kerala

Case No : Criminal Rev. Petition No. 534 of 2009

Pushpa Sasidharan Nair

APPELLANT

Vs

Rajan and State of Kerala

RESPONDENT

Date of Decision : 20-06-2011

Acts Referred:

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

Citation : (2011) 06 KL CK 0225

Hon'ble Judges : P.Q. Barkath Ali, J;A.K. Basheer, J

Bench : Division Bench

Advocate : R. Sudeesh Kumar, for the Appellant; A.A. Mohammed Nazir, for the Respondent

Final Decision : Dismissed

Judgement

P.Q. Barkath Ali, J.—Revision Petitioner is the accused in C.C. No. 662/2001 on the file of the Judicial Magistrate of the First Class-I, Attingal and the Appellant in Crl.A. No. 154/2004 on the file of the Court of the Addl. Sessions Judge (Fast Track Court-III), Thiruvananthapuram. She was convicted u/s 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for three months and to pay compensation of Rs. 6,00,000/- to the complainant, in default to undergo simple imprisonment for further period of one year. On appeal by the accused, the lower appellate court by September 27, 2008 confirmed her conviction, but modified the sentence to imprisonment till the rising of court and to pay fine of Rs. 5,10,000/-, in default to undergo simple imprisonment for one year. There was also a direction that fine amount, if realized, should be paid to the complainant (PW1) as compensation. Now the accused has come up in revision challenging her conviction and sentence.

2. The case of the first Respondent/complainant, as testified by him as PW1 before the trial court and as detailed in the complaint, in brief, is this:

The accused borrowed Rs. 5,00,000/- from him for purchasing a flat at

Ernakulam and to discharge that liability the accused issued Ext. P1 cheque dated August 2, 1999 which when presented for collection was returned dishonoured for want of sufficiency of funds in the account of the accused in the bank. In spite of notice Ext. P4 dated February 1, 2003 the accused neither sent any reply nor repaid the amount. Therefore, he filed a complaint before the court u/s 138 of the Negotiable Instruments Act.

3. On receipt of the complaint, the learned Magistrate recorded the sworn statement of the complainant and took cognizance of the offence. PWs.1 to 4 were examined and Exts. P1 to P11 were marked on the side of the complainant. When questioned u/s 313 Code of Criminal Procedure, the case of the accused was that the complainant was conducting a chitty and as security for the chitty amount received, she issued a signed blank cheque, which was mis-used by the complainant and created Ext. P1. She got herself examined as DW1 and DWs. 2 and 3 were also examined on her side.

4. The trial court, on an appreciation of the evidence, found the accused guilty of the offence punishable u/s 138 of the Negotiable Instruments Act, convicted her thereunder and sentenced her as aforesaid. On appeal by the accused, the lower appellate court confirmed her conviction but modified the sentence as mentioned above. The accused has come up in revision challenging his conviction and sentence.

5. Heard the counsel for the revision Petitioner/accused and the counsel for first Respondent/complainant.

6. The following points arise for consideration in

this appeal:

1) Whether the conviction of the revision Petitioner by the trial court u/s 138 of the Negotiable Instruments Act, which was confirmed in appeal by the lower appellate court, can be sustained?

2) Whether the sentence imposed against the revision Petitioner is excessive or unduly harsh?

7. Point No. 1:

PW1, the complainant, testified in terms of the complaint. PW2 is the Branch Manager of State Bank of India, Thampannoor Branch who proved Ext. P11 statement of account. PW3 is a witness to the transaction. I have gone through their evidence. I find no reason to disbelieve their evidence. Nothing was brought out in their cross examination to discredit their evidence.

8. The case of the accused was that the complainant was conducting a chitty and as security for the chitty amount received, she issued a signed blank cheque, which was misused by he complainant and created by Ext. P1. The accused was examined as DW1 and two witnesses were examined as DWs.2 and 3. DW2 is an employee of the Chit Fund which was conducted by the complainant. DW3 is one

Raveendran, a retired Circle Inspector of Police. He was a witness in C.C. No. 679/99 on the file of the Judicial Magistrate of the First Class, Varkala. Evidence of DWs.2 and 3 did not in any way help the accused to prove her case. Both the courts below have chosen to disbelieve the evidence of DWs.2 and 3. I find no reason to come to a different conclusion on going through their evidence.

9. For all these reasons, I hold that the trial court as well as the lower appellate court is perfectly justified in rejecting the case of the accused and accepting the case of the complainant and holding that the accused is found guilty of the offence punishable u/s 138 of the Negotiable Instruments Act. Her conviction u/s 138 of the Negotiable Instruments Act is confirmed.

10. As regards the sentence, the trial court imposed a sentence of simple imprisonment for three months and to pay compensation of fine of Rs. 6,00,000/- to the complainant, in default to undergo simple imprisonment for one year. The lower appellate court modified the sentence to imprisonment till the rising of court and to pay fine of Rs. 5,10,000/- with default sentence. The fine amount, if realized, was ordered to be paid to the complainant as compensation. I find no special ground to reduce the sentence.

11. In the result, the revision petition is dismissed confirming the conviction and sentence imposed on the revision Petitioner/accused. Two months' time is granted for payment of the fine amount. The revision Petitioner shall surrender before the trial court on or before July 15, 2011 to receive the sentence. Her bail bonds are cancelled.