(2004) 05 KL CK 0016

In the High Court Of Kerala

Case No : Criminal A. No. 616 of 1996

R. Babu APPELLANT

Vs

C. Suresh RESPONDENT

Date of Decision : 17-05-2004

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2004) 2 ALT(Cri) 141 : (2005) 1 BC 604 : (2004) 3 CivCC 259 : (2004) 122 CompCas 353 : (2004) 3 ILR (Ker) 367 : (2004) 2 KLJ 83 : (2004) 2 KLT 837 : (2004) 3 RCR(Criminal) 654

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : G.S. Reghunath, R.S. Kalkura, Mohan Jacob George and M. Ramaswamy, for the Appellant; Blaze K. Jose, for the Respondent

Judgement

K.A. Abdul Gafoor, J.—The appellant has come up with this appeal when his complaint u/s 138 of the Negotiable Instrument Act has been dismissed. The only reason for the dismissal is that the cheque in question, Ext. P1, was issued in respect of an account maintained by Suresh Agencies by its proprietor and not by the respondent C. Suresh. Therefore, according to the court below the appellant/complainant ought to have filed a complaint against the firm and its proprietor and not against its proprietor in his personal capacity. PW.2 is the Bank Manager. He has deposed before the court below that the account in question against which the cheque was drawn was maintained by M/s. Suresh Agencies of which C. Suresh was the proprietor. The accused did not have a case before the court below that he was not the proprietor of the said firm. In terms of Section 138 of the act, when a cheque is bounced, the person who issued it becomes liable for prosecution for the offence under the said provision. In such circumstances whether the cheque is issued by a business firm or not, the person who had drawn the cheque is liable under Sec. 138.

2. There was no liability on the part of the complainant/appellant to implead the

business firm or its proprietor in that capacity. He could have very well launched a complaint against the person who had drawn the cheque whether it is in his capacity as the proprietor of the firm or in personal capacity.

3. In such circumstances the court below has erred, while dismissing the complaint holding that "Ext. P1 cheque has not been issued by the accused in his personal capacity, towards the dues to be paid by him to the complainant".

4. With regard to the issuance of notice and filing of the complaint there was no dispute. In such circumstances I am satisfied that Ext. P1 cheque has been issued by the respondent/accused and that it has been dishonoured as deposed by PW.2 for want of sufficient cash in the account, so the respondent/accused has committed the offence punishable under Sec. 138 of the Negotiable Instruments Act. The judgment of the court below is therefore set aside and the accused/respondent is found guilty of the offence punishable u/s 138 of the Act.

Accordingly, the respondent/accused is convicted and sentenced to pay a fine of Rs. 60,000/- out of which, if realised, Rs. 50,000/- shall be paid, to the appellant/ complaint. In case of default to pay the fine, he shall undergo simple imprisonment for a period of six months.

