(2012) 01 KL CK 0036

In the High Court Of Kerala

Case No : Criminal A. No. 1128 of 2004 (C)

Rajendran APPELLANT

Vs

Vivekanandan and State of Kerala RESPONDENT

Date of Decision : 17-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 255(1)
Negotiable Instruments Act, 1881 (NI) — Section 118, 138, 139

Citation : (2012) 01 KL CK 0036

Hon'ble Judges : N.K. Balakrishnan, J

Bench : Single Bench

Advocate : K.P. Dandapani, for the Appellant; Bindu Sreekumar, Sri Basant Balaji for R1, Sri R. Gopan, for R2 and Smt. V.H. Jasmine, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Balakrishnan, J.—The appellant challenges the verdict of acquittal passed by the Court below in a case filed u/s 138 of Negotiable Instruments Act. The case of the complainant is that on 5.5.2000, the accused/respondent borrowed Rs. 1,50,000/- from the complainant and to discharge that amount, Exhibit P1 cheque was issued, which on presentment was bounced due to insufficiency of funds. On receipt of the dishonour memo statutory notice was sent. It was acknowledged by the respondent. But the amount was not paid. Hence, the complaint was filed.

2. The complainant got himself examined as PW1 and Exhibits P1 to P7 were marked. Three witnesses were examined on the side of the defence. The learned Magistrate found that the case put forward by the defence is more probable and acceptable and hence the respondent was acquitted u/s 255(1) of Cr.P.C.

3. The learned counsel for the appellant submits that the Court below ought to have found that the respondent has not rebutted the presumption available under sections 118 and 139 of Negotiable Instruments Act. There is evidence to

show that Exhibit P1 was signed and issued by the accused and that it was issued to discharge an existing liability and as such the findings entered by the Court below is unsustainable.

4. The points for consideration are:

(i) whether the prosecution could prove that Exhibit P1 was executed by the respondent in discharge of a legally recoverable debt/liability?

(ii) whether the order of acquittal passed by the Court below is liable to be set aside on any of the grounds urged by the appellant?

5. Point (i): It was sworn by PW1 that the accused had borrowed from him Rs. 1,50,000/-. That amount was not repaid by the accused. Hence, to discharge that liability, Exhibit P1 cheque was issued by the accused on 15.5.2000. The learned counsel for the accused submits that either in the complaint or even in the examination in chief, the complainant did not say when exactly the accused had borrowed from him Rs. 1,50,000/-.

6. According to the accused, one Mr. Sivanandan is the person behind in causing this complaint to be filed by PW1. There is evidence to show that Sivanandan, mentioned above, had filed a suit against the respondent for specific performance as O.S. No:315/2000. PW1 has also filed a suit against the respondent before Sub Court, Mavelikara, for realisation of a sum of Rs. 1,50,000/- which is stated to be the liability in respect of which Exhibit P1 was issued. It was admitted by PW1 that his brother has also filed a suit before Sub Court, Mavelikkara.

7. According to the accused, Sivanandan is a person having money lending business and many other unholy activities. PW1 and his brother are the henchmen of that Sivanandan. In other words, according to the defence, by using the muscle power and influence Sivanandan used to obtain signed blank cheque leaves and signed stamp papers for the money he had lent and he used to cause suits and complaints to be filed through PW1 or his brother and that this complaint is one among them caused to be filed by PW1 on behalf of Sivanandan, mentioned above.

8. It is also contended that PW1 himself is a person involved in so many criminal cases and that he was actually the person who is carrying out such business or unholy activities of Sivanandan, mentioned above. The learned counsel for the complainant would submit that simply because there were three cases against PW1, it cannot be said that he was the henchman of Sivanandan or that he was acting on behalf of that person.

9. During cross examination it was stated by PW1 that the accused borrowed a sum of Rs. 1,50,000/- on 5.5.2000 agreeing to repay the said amount within one week. Now he says that the accused borrowed the amount for the purchase of the vehicle and that the accused went to the house of PW1 for borrowing the amount. All these details did not find a place in the complaint or even in the

evidence given by him in chief examination. That apart, according to the learned counsel for the respondent, it is highly improbable that in the Year 2000, a person would simply lend a sum of Rs. 1,50,000/- to another person without obtaining any document. No independent evidence was adduced by the complainant to prove the money transaction; namely, the lending of money by PW1 to the accused or to prove that the cheque was signed and issued on 15.5.2000 as stated by PW1.

10. PW1 says that he does not know the house of the accused but he says that at the time when money was lent, the accused was residing in a rented house. He further says that only at the time of filing of the complaint he enquired as to the actual residence of the accused. These aspects would also show that PW1 was only a name lender and that there was absolutely no transaction between PW1 and the accused. The fact that the accused was then residing in the rented house would probabilise the case of the defence that it is highly improbable that a person like PW1 would lend Rs. 1,50,000/- (in the year 2000) to a person who had not, even a house of his own. So many other questions were also put to PW1, as to the house name and address of the accused, to contend that PW1 had no knowledge about the accused or his address or any other particulars and that the complaint was filed only as directed and dictated by Sivanandan, mentioned above.

11. The specific case put forward by the respondent is that there was an agreement for sale of property and during that transaction the accused had issued signed blank cheque leaves to Sivanandan and that one among them was misused by Sivanandan to incorporate the name of PW1 as the payee and filling up the same, he made PW1 to file this complaint.

12. That Sivanandan was examined by the defence as DW1. He has stated that the accused is distantly related to him as Nephew and he was liable to pay PW1 a sum of Rs. 2,00,000/- and it was to realise that amount a suit was filed by him before Sub Court. Later he also deposed that there was an agreement to purchase the property of the accused for a sum of Rs. 2,50,000/- out of which Rs. 2,00,000/-was paid by him to the accused. Though he reluctantly admits that he knows PW1, he deposed that he did not know Mohandas, the brother of PW1. When questions were put to him with regard to the case filed by PW1 and his brother, DW1 says that he has no connection with those cases.

13. The other contention that was advanced by the accused is that DW1 had used the accused also in his money lending business and at that time DW1 had obtained blank cheque leaves and signed blank stamp papers from the accused. DW2, the brother of PW1, was examined to say that he was an agent or henchman of DW1 for filing cases on behalf of Sivanandan. DW2 has denied the suggestion.

14. The defence mainly relies upon the evidence of DW3, a mediator. The fact that he had intervened in the matter as a mediator was not disputed. DW1 has

stated that PW1 himself has admitted that the cheque in question, in this case, was the cheque entrusted to him by Sivanandan. When PW1 was asked to come to a settlement he was stated to have told DW3 that without consulting and getting consent of DW1 he cannot give any definite opinion. On going through the evidence given by DW3, it could be seen that he had, in fact, tried to settle the matter as a ''mediator''. He could gather from the talks he had with PW1 and the accused that the cheque in question was the one given to DW1 and monetary transaction was had between the accused and Sivanandan and that the cheque which was left at the hands of Sivanandan was given by him to PW1 to cause this complaint to be filed.

15. Though so many questions were put to DW3 to challenge his veracity, the trial Court has rightly found that the evidence given by DW3 inspires confidence and that the transaction was actually between the accused and the DW1. The further fact is that no evidence what so ever was adduced by the complainant to prove the actual lending of money and due execution of Exhibit P1 cheque. The Court below is perfectly justified in finding that the preponderance of probabilities lies in favour of the case advanced by the defence. The case put forward by the defence is found to be reasonable, probable and acceptable. There is no strong or sufficient material to upset that findings. As such the verdict of acquittal given by the Court below is only to be confirmed.

In the result this Criminal appeal is dismissed.