(2012) 01 KL CK 0095

In the High Court Of Kerala

Case No : Criminal A. No. 1175 of 2005

Saji Gauravasia, Proprietor, Vellamattathil Hardware, Kothanalloor P.O. Kottayam — APPELLANT

Vs

T.K. Raju and The State of Kerala — RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:
- Criminal Procedure Code, 1973 (CrPC) — Section 255(1)
- Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2012) 01 KL CK 0095

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

Bench : Single Bench

Advocate : K.K. Vijayakumar and Sri. Ramadas. N.N, for the Appellant; J. George, for R1, Sri. Unni. K.K., Ezhumattoor for R2 and Sri. Sreejith. V.S., Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

N.K. Balakrishnan, J.—The complainant is the appellant. His complaint filed u/s 138 of the N.I. Act ended in acquittal u/s 255(1) Cr.P.C. The case of the complainant is that there were business transactions between the complainant and the accused. The accused had purchased cement and other articles from his shop/establishment. To discharge that debt Exts.P1 and P2 cheques were issued. When presented for collection, those cheques were dishonored on the ground payment stopped by the drawer. Statutory notice was sent but no reply was given.

2. The complainant was examined as P.W.1 and Exts.P1 to P10 were marked. The accused was examined as D.W.1 and Exts.D1 to D8 were marked. The learned Magistrate found that the amount due to the complainant had already been discharged as evidenced by Exts.D1 to D6 receipts which were actually admitted by the complainant also and so the case of the accused that whatever amount was liable to be paid by the accused was already paid is reasonable and probable

and hence the accused was acquitted.

3. The learned counsel for the appellant/complainant submits that the court below failed to note that Exts.D1 to D6 receipts were issued pertaining to another transaction. The total amount covered by those six receipts come to Rs. 64,500/-whereas the amount payable by the accused as per the two cheques is only Rs. 42,510/-. That itself, according to the appellant, would show that Exts.D1 to D6 have absolutely nothing to do with Exts.P1 and P2 cheques. Exts.P1 bears the date 19.7.2000 and Ext.P2 bears the date 25.7.2000. It is further submitted by the learned counsel for the complainant that Ext.P10 is an audited account statement prepared by the Chartered Accountant based on the bills, accounts etc. and so due credence has to be given to the entries in Ext.P10. Since the payments covered by Exts.D1 to D6 were clearly mentioned in Ext.P10, the other entries in Ext.P10 that Rs. 42,500/- was payable by the accused being the amount covered by the two dishonoured cheques should have been accepted by the learned Magistrate, the complainant contends.

4. The learned counsel for the accused would submit that there is nothing in Exts.D1 to D6 to indicate that those payments were pertaining to another transaction. It is also pointed out that P.W.1 has admitted that the complainant had also received Rs. 7000/- which was the amount payable under another transaction. According to the complainant, the amount paid was towards another transaction which was covered by another cheque and that has nothing to do with Exts.P1 and P2.

5. According to the complainant, the amount was payable by the accused towards the price of the cement and other articles purchased by the accused from the shop of the complainant. The total amount due was Rs. 42,510/- and it was to discharge that liability Exts.P1 and P2 cheques were issued. When the complainant admits Exts.D1 to D6, though according to the complainant it was pertaining to another transaction, the complainant could have produced the bill books and account books to show that the sum of Rs. 42,510/- was payable by the accused as the price of the cement or other articles purchased by the accused. If there was another transaction in respect of which the amounts were paid as evidenced by Exts.D1 to D6 as contended by the complainant, then that also could have been proved by the complainant by producing bills or entries in the account books pertaining to the same. That was not produced. Though the accused contends that the amounts payable were discharged under Exts.D1 to D6 and also by effecting payment of Rs. 7000/- on 9.4.2001, there is some difficulty to accept that version also. If Rs. 7000/- is added along with the amount covered by Exts.D1 to D6, the total would come to Rs. 61,500/-. It can be found from the evidence that there were business transactions between the complainant and the accused and that some amount was due from the accused to the complainant. There were so many transactions between the parties, it is contended. The bill books and account books are to be produced to show that Exts.D1 to D6 and the sum of Rs. 7000/- paid by the accused on 9.4.2001 have

nothing to do with Exts.P1 and P2. The complainant has to prove that fact by producing the relevant bill books and entries in the account books. Considering the nature of the case, I find that an opportunity has to be given to both sides to adduce further evidence in the matter.

6. In the result, this appeal is allowed in part. The verdict of acquittal passed in favour of the accused is set aside. The case is remanded to the trial court for fresh disposal. Both parties are given opportunity to adduce further evidence in the matter. The parties will appear before the trial court on 23.02.2012.