

(2005) 12 KL CK 0032
In the High Court Of Kerala
Case No : Criminal R.P. No. 3256 of 2005

Sankuru

APPELLANT

Vs

Gopinathan

RESPONDENT

Date of Decision : 22-12-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 30, 357(3), 431
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2006) 2 ALD(Cri) 1 : (2006) 4 BC 521 : (2006) 1 ILR (Ker) 224 :
(2006) 2 RCR(Criminal) 113

Hon'ble Judges : R. Basant, J

Bench : Single Bench

Advocate : Ganesh G. Pillai, for the Appellant; Babu Karukapadath and P.M. Habib, Public Prosecutor, for the Respondent

Judgement

R. Basant, J.—This revision petition is directed against the concurrent verdict of guilty, conviction and sentence imposed on the petitioner in a prosecution u/s 138 of the N.I. Act.

2. The cheque is for an amount of Rs. 70.000/-. Signature in the cheque and handing over of the cheque are not disputed. The short contention raised is that the liability has been discharged under Ext. DI receipt.

3. The complainant examined himself as PW1 and Exts. P1 to P7 were marked. The accused, in support of his plea of discharge, examined DW1 and proved Ext. DI.

4. The complainant denied execution of Ext. DI receipt. Signature therein was stoutly disputed. To prove Ext. DI the accused examined only his son-in-law as DW1. The Courts below concurrently came to the conclusion that reliance cannot be placed on DW1 and Ext. DI. In view of the stout denial of execution of Ext. DI by the complainant, the accused must have proved Ext. DI satisfactorily, it was held concurrently. Accordingly the Courts below proceeded to pass the impugned

concurrent judgments.

5. Arguments have been advanced before me by the learned Counsel for the petitioner. He contends that the Courts below should have accepted the plea of discharge. Ext. DI having been denied and disputed by the complainant, the burden was undoubtedly on the accused to prove the pleaded discharge satisfactorily. The self-serving testimony of the son-in-law of the accused was rightly found by the Courts below to be not satisfactory proof of alleged discharge. Sitting as a Court of revision, at this third tier litigation, I find no reason to invoke the powers of superintendence and correction to interfere with the said finding of fact, which is supported by good, satisfactory and cogent reasons. At any rate, the said finding does not warrant interference.

6. The verdict of guilty and conviction are not assailed on any other ground. The appellate Court had modified the sentence imposed. The petitioner now faces the prospect of imprisonment till rising of Court. There is a further direction to pay an amount of Rs. 70,000/- (i.e. the cheque amount) as compensation and in default to undergo S.I. for a period of six months.

7. The learned Counsel for the petitioner submits that even if a direction for payment of compensation were to be reckoned as a direction for payment of fine, Section 30, Cr.P.C. comes in and bars the imposition of default sentence in excess of one-fourth of maximum substantive sentence that can be imposed. The imposition of default sentence of S.I. for six months is, in these circumstances, not justified, contends the learned Counsel for the petitioner.

8. The learned Counsel for the respondent/complainant, on the other hand, contends that the compensation payable cannot be equated with fine for the purpose of determining the maximum default sentence u/s 30, Cr.P.C. I am inclined to agree with the learned Counsel for the petitioner. There is no provision in the Code of Criminal Procedure under which the direction for payment of compensation can be enforced by the petitioner. It is true that Section 431 stipulates that the compensation amount can be recovered as if it were fine. But this stipulation by itself is not sufficient to justify imposition of a default sentence, for non-payment of the compensation amount u/s 357(3), Cr.P.C. But the points on that aspect cannot any more prevail on the judicial mind in the light of the clear pronouncement of law in the decisions in Hari Kishan Vs. Sukhbir Singh and Others, and Suganthi v. Jagadeesan (2002) BC 10 (SC) : (2002) CCR 88 (SC) : 2002(1) KLT 581. The declaration of law in those decisions squarely applies and binds all Courts.

9. It is now trite that notwithstanding absence of a specific enabling stipulation in the Code of Criminal Procedure, Courts are competent to impose default sentence for non-payment of compensation amount directed to be paid u/s 357(3), Cr.P.C. At any rate, all the restrictions which apply to imposition of default sentences for fine must necessarily apply for imposition of default sentence for nonpayment of compensation u/s 357(3), Cr.P.C. In this view of the

matter, I am satisfied that the default sentence of six months imposed is legally not justifiable. Only a maximum default sentence of S.I. for 3 months can be imposed as the offence on the relevant date was punishable with a maximum substantive sentence of imprisonment for one year. The challenge raised against the sentence imposed can succeed to the above extent.

10. In the result:

(a) The revision petition is allowed in part.

(b) The impugned verdict of guilt, conviction and sentence imposed u/s 138 of the N.I. Act are upheld.

(c) The direction issued u/s 357(3), Cr.P.C. to pay compensation is also upheld.

(d) But the default sentence is reduced from S.I. for a period of six months to S.I. for three months.

11. The learned Magistrate shall take necessary steps for execution of the sentence/direction if the petitioner does not appear before the learned Magistrate on 22.1.2006 and complies with the direction.