
(1998) 02 KL CK 0014
In the High Court Of Kerala
Case No : Criminal Appeal No. 66 of 1994

S.S. Sreekumar

APPELLANT

Vs

M.M. Ibrahim

RESPONDENT

Date of Decision : 20-02-1998

Acts Referred:

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

Citation : (1998) CriLJ 2492 : (1999) 4 RCR(Criminal) 342

Hon'ble Judges : S. Marimuthu, J

Bench : Single Bench

Advocate : Sumathi Dandapani, for the Appellant; S.V. Rajan, for the Respondent

Final Decision : Allowed

Judgement

S. Marimuthu, J.—The appellant herein was the complainant before the Judicial First Class Magistrate, Varkala in C.C. No. 252/93, in which the present respondent was the accused. The said complaint was filed u/s 138 of the Negotiable Instruments Act (as amended in the year 1989). The appeal has been filed, questioning the judgment of the said Magistrate for acquitting the accused respondent under Section 255(1), Cr.P.C. on the only ground that there was no proper notice issued by the appellant to the respondent as required u/s 138 of the Negotiable Instruments Acts. Admittedly, the appellant and the respondent have been doing hardware business in Varkala and the respondent was purchasing articles from the wholesale business of the appellant. On 9-11-1991, the respondent purchased hardwares for a total sum of Rs. 41,639.50 out of which Rs. 11,639.50 was paid on that day itself and for the balance the respondent issued Ext. P1 cheque to the appellant. When Ext. Pt was presented in the bank for collection on 1.3-4-1992, it was returned on the same day as no amount was available in the account of the respondent. Thereafter the appellant issued a notice Ext. P4 (copy) on 27-4-1992, for which Ext.D4 reply was sent by the lawyer of the respondent.

2. As I have pointed out above the only ground taken by the Magistrate for acquitting the respondent is that there was no proper notice in accordance with the provisions of law embodied in the Negotiable Instruments Act. According to the Magistrate, Ext.P1 cheque was issued by M.M. Ibrahim. But the Ext.P4 notice was issued to M M. Ibrahim and Company and Ext. P4 notice was received by one Salim under Ext.P5 acknowledgment and there is no evidence as to who was Salim who received the notice and the above circumstances raise a doubt in the case of the appellant. Finally the case ended in acquittal. In challenging the above findings of the learned Magistrate the learned Counsel appearing for the appellant submitted that M/s. M M. Ibrahim Company is a sole proprietorship firm and the bank accounts are only in the name of M M. Ibrahim and therefore he issued a cheque in his name alone and however Ext.P4 was issued in the name of M. M. Ibrahim and Company. On account of the fact that Ext. P4, was sent in the name of M.M. Ibrahim and Company, it does not mean that it was sent on behalf of a company which has got so many partners. Further the burden lies on the respondent that there is M. M. Ibrahim and Company which issued Ext. P1 cheque. After the receipt of the notice Ext.P4 the respondent sent a reply under Ext.D4, wherein it is stated that the appellants lawyer has sent the notice on behalf of his client M.M. Ibrahim. In Ext. D4, we do not find M.M. Ibrahim and Company. While considering the above submissions, I feel that the issuance of the cheque, the notice issued by the appellant and the filing of the complaint after the receipt of the reply notice are within the time prescribed by law. Once again, when I examine the above submissions of the learned Counsel for the appellant and also the only found out by the lower Court for acquittal I am of the view that the judgment of acquittal is not correct. For proper notice has been issued as discussed above. There fore this is a case wherein this appeal can be allowed by setting aside the judgment of the trial Court and the matter can be remanded to the trial Court for fresh trial and disposal of the same according to law.

In the result the appeal is allowed and the judgment, the Magistrate pronounced for acquittal, is set aside and the matter is remanded back to the Magistrate for fresh disposal as early as possible in accordance with law. The appellant is directed to appear before the Magistrate on 20th March, 1998.