

(2011) 06 KL CK 0224

In the High Court Of Kerala

Case No : Criminal Rev. Petition No. 176 of 2005

Sunnymon Thomas

APPELLANT

Vs

Biju Mon Nair and State of Kerala

RESPONDENT

Date of Decision : 20-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Negotiable Instruments Act, 1881 (NI) — Section 118, 138, 139

Citation : (2011) 06 KL CK 0224

Hon'ble Judges : P.Q. Barkath Ali, J;A.K. Basheer, J

Bench : Division Bench

Advocate : P. Ramakrishnan, for the Appellant; K.M. Kurian, for the Respondent

Final Decision : Dismissed

Judgement

P.Q. Barkath Ali, J.—Revision Petitioner is the accused in C.C. No. 32 of 2001 on the file of the Judicial Magistrate of the First Class, Kattappana and the Appellant in Crl. Appeal No. 48 of 2003 on the file of the Addl. Sessions Court, Thodupuzha. He was convicted u/s 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for six months and to pay compensation of Rs. 39,140/- to the complainant, in default to undergo simple imprisonment for two months by the learned Magistrate by judgment dated January 28, 2003. On appeal by the accused, the lower appellate court by judgment dated October 28, 2004 confirmed his conviction, but reduced the sentence to simple imprisonment till the rising of court and to pay compensation of Rs. 43,000/- to the complainant, in default to undergo simple imprisonment for one month. Now the accused has come up in revision challenging his conviction and sentence.

2. The case of the first Respondent/complainant, as testified by him as PW1 and as detailed in the complaint, is that the accused borrowed Rs. 39,140/- from him and to discharge that liability he issued Ext. P1 cheque dated August 17, 2000 drawn on the Union Bank of India, Vandanmedu Branch, which when presented

for collection was dishonoured for want of sufficiency of fund in the account of the revision Petitioner/accused in the bank and that inspite of notice Ext. P3 dated October 4, 2000 the accused did not repay the amount. Therefore, the complainant filed the complaint before the trial court u/s 138 of the Negotiable Instruments Act.

3. The learned Magistrate on receipt of the complaint, recorded the sworn statement of the complainant (PW1) and took cognizance of the case. The accused on appearance before the trial court, pleaded not guilty to the charge u/s 138 of the Negotiable Instruments Act. The claimant was examined as PW1 and Exts. P1 to P5 were marked on the side of the prosecution. When questioned u/s 313 Code of Criminal Procedure the accused denied the entire transaction. No defence evidence was adduced. On an appreciation of the evidence, the trial court found that the accused has committed the offence punishable u/s 138 of the Negotiable Instruments Act and convicted him thereunder and sentenced him as aforesaid. On appeal by the accused the lower appellate court confirmed his conviction but modified the sentence as mentioned above. The accused has come up in revision challenging his conviction and sentence.

4. Heard the counsel for the revision Petitioner/accused and the counsel for first Respondent/complainant.

5. The following points arise for consideration:

1) Whether the conviction of the revision Petitioner by the trial court u/s 138 of the Negotiable Instruments Act, which was confirmed in appeal by the lower appellate court, can be sustained?

2) Whether the sentence imposed against the revision Petitioner is excessive or unduly harsh?

6. Complainant as PW1 testified in a convincing manner before the trial court regarding the transaction. Nothing was brought out in cross-examination to discredit his evidence. Further, his evidence is supported by Exts. P1 to P5.

7. The case of the accused as suggested during cross-examination of PW1 and as stated by him when questioned u/s 313 Code of Criminal Procedure by the Magistrate was that the accused took one of his cheque leaves from a shelf in his ration shop without his knowledge, which was misused by the accused and created Ext. P1. No evidence was adduced by him to prove his case. Further, as the accused admits execution of Ext. P1, presumption, as envisaged u/s 139 and 118 of the Negotiable Instruments Act is available. No satisfactory evidence was adduced by the accused to rebut the above presumption.

8. For all these reasons, I am inclined to hold that both the courts below are perfectly justified in accepting the evidence of PW1 and holding that the accused has committed the offence punishable u/s 138 of the Negotiable Instruments Act. Therefore, the conviction of the revision Petitioner u/s 138 of the Negotiable Instruments Act by the trial court which was confirmed in appeal is upheld.

9. As regards the sentence, the trial court imposed a sentence of simple imprisonment for six months and to pay compensation of Rs. 39,140/- to the complainant, in default to undergo simple imprisonment for two months. The lower appellate court modified the sentence to undergo simple imprisonment till the rising of the court and to pay compensation of Rs. 43,000/- to the complainant. I find no reason to reduce the sentence. That being so, the appeal has to be dismissed.

10. In the result, the appeal is dismissed. Bail bonds of the accused are cancelled. He shall surrender before the trial court on or before July 15, 2011 to suffer the sentence. Two months' time is granted for payment of the compensation.