
(2004) 11 SC CK 0033

In the Supreme Court Of India

Case No : Criminal Appeal No. 1324 of 2004 (Arising out of SLP (Criminal) No. 4863 of 2003)

T.V. Mylsamy and Another

APPELLANT

Vs

R. Meenakshi Sundaram

RESPONDENT

Date of Decision : 22-11-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2004) 11 SC CK 0033

Hon'ble Judges : Y.K. Sabharwal, J;D.M. Dharmadhikari, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Leave granted.

2. The main challenge to the impugned judgment of the High Court, dated 26.9.2003 is to the extent it directs the transfer of CC No.181 of 2003 on the file of the Court of the Judicial Magistrate No.VI, Coimbatore to the Court of the Judicial Magistrate No.II, Coimbatore for joint trial of both CCs Nos.67 of 2002 and 181 of 2003. The direction for the transfer as aforesaid as also joint trial can be appreciated only if the background of the controversy between the parties is briefly noted.

3. At the outset, it deserves to be noticed that the controversy herein is in respect of Cheque No.614411. It is not in issue that the said cheque was endorsed by the respondent herein in favour of the first appellant. That cheque was initially issued by M/s Karpagam Theatres Pvt.Ltd. in favour of the respondent, who, in turn, endorsed it in favour of the first appellant being proprietor of M/s Kavya International. On 26.12.2001, M/s Karpagam Theatres Pvt. Ltd. made a complaint u/s 200 CrPC that Appellant 1 herein and the respondent and their companies had forged the cheque in question by altering the date from 21.5.2001 to 21.8.2001 and the amount from Rs. 2 lakhs to Rs. 42

lakhs. The said complaint was registered on 25.3.2002. The appellants herein sought quashing of the said complaint. The High Court, in terms of order dated 9.7.2002 has stayed further proceedings in the complaint. We are not concerned with the said complaint or the order passed by the High Court insofar as the present controversy is concerned. The cheque in issue was deposited by the first appellant with the bank and on dishonour, a complaint, dated 23.1.2002 u/s 138 of the Negotiable Instruments Act has been filed against the respondent by the first appellant. We are told that the said complaint is at its final stage and evidence of the complainant has already been recorded by the trial Magistrate.

4. On 12.3.2003, a complaint CC No. 181 of 2003, was filed u/s 200 CrPC by the respondent against the first appellant, his wife and another, inter alia, alleging intimidation on 7.3.2003 by the accused in the said complaint and also alleging forgery of the cheque in question by the first appellant. The case of the respondent in the complaint is that Cheque No.614411 was for a sum of Rs.2 lakhs and was dated 21.5.2001 and not for Rs.42 lakhs and dated 21.8.2001. It is for quashing of this complaint (CC No. 181 of 2003) that the appellants had moved the High Court by preferring a petition u/s 482 CrPC. The petition was filed by the appellants-husband and wife. While dismissing the petition for quashing, which order we are not inclined to interfere with, the High Court directed the transfer and joint trial, as abovenoticed, namely, the joint trial of complaint dated 12.3.2003 filed by the respondent with the complaint filed u/s 138 of the Negotiable Instruments Act which the first appellant had filed on 23.1.2002.

5. Apart from the fact that there was no prayer in the petition filed u/s 482 CrPC seeking joint trial nor was any independent petition filed by the respondent seeking joint trial, even otherwise having regard to the facts and circumstances, there was no ground to direct transfer of the complaint and joint trial of the two complaint cases. It has to be borne in mind that the allegations about forgery were made as far back as in December 2001 and the complaint u/s 138 of the Negotiable Instruments act was filed as far back as on 23.1.2002 but the respondent filed his complaint nearly two years later on 12.3.2003. Assuming there was intimidation as alleged in the complaint, yet, the factum of the so-called forgery was known even when the complaint abovenoted had been filed in December 2001 and also when the complaint by the first appellant was filed on 23.1.2002. All this, coupled with the fact that the proceedings in complaint filed u/s 138 of the Negotiable Instruments Act are at final stage, was another important aspect which ought to have been borne in mind. It does not appear from the impugned order that any of these aspects were taken into consideration by the High Court while passing the impugned order.

6. In the aforesaid circumstances, we set aside the direction in the impugned order for transfer of CC No. 181 of 2003 to be tried with CC No. 67 of 2002. Both the cases shall continue separately.

7. The appeal is allowed in these terms, making it clear that the observations

made in this order will have no effect on the trial of any of the two complaints or even the third complaint referred to hereinbefore.