
(2012) 10 KL CK 0094
In the High Court Of Kerala
Case No : Criminal R.P. No. 712 of 2003

V. Viswalal and Another

APPELLANT

Vs

E.S.I. Corporation and Another

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

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

Citation : (2013) 2 BC 359 : (2012) 4 KLJ 424 : (2013) 1 KLT 226

Hon'ble Judges : P.S. Gopinathan, J

Bench : Single Bench

Advocate : B. Mohanlal, for the Appellant; T.D. Rajalakshmi and Madhu Ben (PP), for the Respondent

Final Decision : Dismissed

Judgement

P.S. Gopinathan, J.—Revision petitioners are the accused 1 and 2 in C.C. No. 141/1997 on the file of the Judicial Magistrate of the First Class-III, Thrissur. The first respondent herein prosecuted the revision petitioners accusing offence u/s 138 of the Negotiable Instruments Act (NI Act), with a plea that the first revision petitioner is the managing partner of the 2nd revision petitioner firm and a sum of Rs. 1,66,500/- was due to the first respondent from the firm towards the ESI contribution and in discharge of the same Exhibit P5 cheque dated 29.4.1997 for the said amount drawn on the Corporation Bank, Pallikummu Branch, Kollam was issued by the revision petitioners and that when Exhibit P5 was sent for collection it was returned dishonoured for insufficient funds as evidenced by Exhibit P6 and P7 memos. Despite the acknowledgement of the notice demanding discharge, as evidenced by Exhibit P9 and P10, the liability was not discharged. The revision petitioners pleaded not guilty. Therefore they were sent for trial. On the side of the prosecution PWs 1 and 2 were examined. Exhibits P1 to P14 were marked. After closing the evidence for the prosecution, when questioned u/s 313 of the Code of Criminal Procedure, the revision petitioners took a plea of total denial. No defence evidence was let in. On appraisal of the evidence, the trial court

arrived at a finding of guilty. Consequently, the revision petitioners were convicted and the first revision petitioner was sentenced to imprisonment till the rising of the court with direction to pay Rs. 87,000/- as compensation to the first respondent, after taking note that during the pendency of the proceedings, Rs. 86,000/- was remitted by the revision petitioners.

2. Aggrieved by the above conviction and sentence, CrI.A. 505/2001 was preferred before the Sessions Judge, Thrissur. The III Additional Sessions Judge (Adhoc-I), by the impugned judgment, while confirming the conviction and the sentence, dismissed the appeal. Assailing the legality, correctness and propriety of the above conviction and sentence as confirmed in appeal, this revision petition is preferred.

3. I have heard Adv. Smt. P.S. Preetha, the learned counsel appearing for the revision petitioners and perused the judgments impugned. The liability for which Exhibit P5 cheque was issued is not disputed. The fact that Exhibit P5 cheque was bounced for insufficient funds and despite the notice demanding discharge, the liability was not discharged, is also not disputed. The persuasive argument that was advanced by the learned counsel for the revision petitioner is that the first revision petitioner was not the managing partner and there is no pleading to that effect and therefore the first revision petitioner is not liable to be prosecuted. In support of her argument the learned counsel relied upon the decision reported in Paresh P. Rajda Vs. State of Maharashtra and Another, . Going by the facts of the case and the reported decision, I find the precedent thereon has no application to the case on hand because it is not disputed that Exhibit P5 cheque was signed by the first revision petitioner. Had he no responsibility for the conduct of the business of the firm, the cheque would not have been signed and issued by him. The fact that the first revision petitioner is the partner of the firm is also admitted. Once the cheque was signed by one of the partner and issued to discharge the liability of the firm, the parties who signed the cheque cannot turn round and say that he was not responsible for the conduct of the business. Suppose he was not a signatory, the argument would have been good. The fact that the revision petitioner as partner of the firm signed the cheque and he was operating the account of the firm itself is sufficient enough to conclude that the revision petitioner was a partner responsible for the conduct of the business of the 2nd revision petitioner firm which had statutory liability with 1st respondent. Partner of a firm, whether managing partner or note who is operating the accounts of the firm cannot escape prosecution u/s 138 of the NI Act basing upon a cheque issued by the firm signed by the partner in discharge of" the liability of the firm with a plea that he was not the managing partner or that he is not responsible for the conduct of the business of the firm. Such plea is available only for a partner who is not a signatory to the cheque. "In this case, it is specifically pleaded that the first revision petitioner signed the cheque on behalf of the firm. First revision petitioner does admit the signing of the cheque, So, he cannot escape the prosecution with a plea that he was not responsible for the conduct of the business or that there is no pleading to that

effect. As I mentioned earlier, the issuance of the cheque dishonouring of the same for want of sufficient funds, demand for discharge and the failure to discharge the liability are not disputed. Therefore, the prosecution is perfectly sustainable. No error, illegality or impropriety is seen committed by the courts below so as to be rectified in revision. Revision petition is devoid of merits.

In the result, revision petition is dismissed. The trial court shall see the execution of sentence and report compliance. The amount already in deposit shall be given credit to. The first revision petitioner is granted two months time to remit the balance.