

P.Gopal Vs. T.Venugopal

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Court : Kerala

Decided On : Aug-26-2013

Judge : Honourable Mr. Justice B.Kemal Pasha

Appellant : P.Gopal

Respondent : T.Venugopal

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE B.KEMAL PASHA MONDAY, THE 26TH DAY OF AUGUST 2013 4TH BHADRA, 1935 CRL.A.No. 585 of 2008 ()
----- AGAINST THE ORDER/

JUDGMENT

IN CC 658/2006 of C.J.M., ALAPPUZHA DATED 24 01-2008 AGAINST THE ORDER/

JUDGMENT

IN CrI.L.P. 177/2008 of HIGH COURT OF KERALA DATED 26 02-2008
APPELLANT(S)/COMPLAINANT:: ----- GOPAL,
AGED 3 YEARS, S/O. PALANI SWAMY, PRASAD NIVAS, VADAKKE NADA
A.N.PURAM, ALAPPUZHA. BY ADVS.SRI.GRASHIOUS KURIAKOSE (SR.)
SRI.B.PRAMOD RESPONDENT(S)/ACCUSED & STATE::
----- 1. T.VENUGOPAL, K.S.E.B.

QUARTERS, KANIYAMBETTA P.O., WAYANAD.

2. PUSHPA, W/O. VENUGOPAL, K.S.E.B. QUARTERS, KANIYAMBETTA P.O., WAYANAD.

3. THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KRALA, ERNAKULAM. R, BY ADV. SRI.LALJI P.THOMAS PUBLIC PROSECUTOR SRI. SREEJITH V.S. THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26-08-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: B. KEMAL PASHA, J -----
Crl. Appeal No. 585 of 2008 ----- Dated this the 26th day of August, 2013

JUDGMENT

This appeal on special leave has been preferred by the complainant in C.C.No.658 of 2006 of the Chief Judicial Magistrate's Court, Alappuzha, alleging an offence punishable under Section 138 of the Negotiable Instruments Act. Respondents 1 and 2 herein were the accused in the said case.

2. The case of the appellant is that respondents 1 and 2, owed an amount of Rs.1,10,000/- to them, in discharge of which liability, Ext.P1 cheque was issued jointly by respondents 1 and 2 from their joint account in the Bank. Ext.P1 cheque, when presented, returned dishonoured for insufficiency of funds in the accounts of respondents 1 and 2. The statutory notice, as contemplated under Section 138(b) of the N.I.Act was issued, which was returned as Crl. Appeal 585 of 2008 -:2:- 'unclaimed'. The complaint was filed in time.

3. The cognizance of the offence under Section 138 of the N.I.Act was taken by the court below. Summons were issued. Both the accused appeared and contested the proceedings. On the side of the complainant, the complainant was examined as PW1 and Exts.P1 to P6 were marked. No defence evidence was adduced. The court below acquitted respondents 1 and 2 under Section 255(1) Cr.P.C. through the impugned judgment by finding that the complainant had no consistent version regarding the consideration of Ext.P1 cheque.

4. It seems that, in the private complaint, the version of the complainant is that respondents 1 and 2 'owed an amount of Rs.1,10,000/-' to him, in discharge of which liability, they issued Ext.P1 cheque. The case of respondents 1 and 2 is that there was a liability of Rs.1,25,000/-, for which a cheque was issued. The said cheque, on presentation, returned dishonoured. A notice was issued and on receipt of the notice, the said liability was settled. Even though no reply notice was issued and any of the said Crl. Appeal 585 of 2008 -:3:- accused persons was not examined, the court below found that the appellant had no consistent case regarding the consideration of the cheque. It seems that in the affidavit filed in lieu of chief-examination, the version of the complainant was that the accused had borrowed an amount of Rs.1,10,000/- from him, in discharge of which liability Ext.P1 cheque was issued. The said version has been clearly explained in the cross-examination. In the complaint, it is the specific case that respondents 1 and 2 owed an amount of Rs.1,10,000/- to the complainant. In the affidavit, it has been stated that an amount of Rs.1,10,000/- was borrowed, in discharge of which liability, Ext.P1 cheque was issued. In cross-examination PW1 has clearly explained the circumstances regarding the demand of Rs.1,10,000/-. According to him, at first an amount of Rs.1,25,000/- was borrowed for clearing the then subsisting liability towards the Kerala State Housing Board, in respect of the property purchased by the appellant from the second respondent and her mother. When the cheque issued by respondents 1 and 2, in discharge of the said liability of Rs.1,25,000/-, was Crl. Appeal 585 of 2008 -:4:- dishonoured on presentation, a notice was issued to respondents 1 and 2. On getting the said notice, respondents 1 and 2 approached the appellant and paid an amount of Rs.15,000/- as part payment and also issued Ext.P1 cheque for the balance amount of Rs.1,10,000/-. According to PW1, that was why he had mentioned in affidavit in lieu of chief-examination that an amount of Rs.1,10,000/- was borrowed. Whatever it is, in the complaint it has been specifically noted that respondents 1 and 2 owed an amount of Rs.1,10,000/- 5. It has to be noted that respondents 1 and 2 have not cared to adduce any evidence in the matter. They have not chosen to examine any of them as defence witnesses to substantiate their contention. By merely pointing out the discrepancy in the affidavit in lieu of chief-examination and the contents of the private complaint, the court below has chosen to acquit respondents 1 and 2 under

Section 255(1) Cr.P.C. On a consideration of the entire matter, I am satisfied that the acquittal has resulted in substantial miscarriage of justice and the entire matter requires Crl. Appeal 585 of 2008 -:5:- reconsideration. Matters being so, the acquittal is liable to be set aside.

6. In the result, this Criminal Appeal is allowed and the impugned judgment is set aside. The complaint is restored and the matter is remitted back to the court below for fresh disposal, in accordance with law. The court below shall permit the complainant to file a fresh affidavit in lieu of chief examination. In such a case, respondents 1 and 2 will get an opportunity to cross-examine PW1 further in the matter. The accused are also entitled to adduce evidence, if any, on their side, in which case the complainant will get an opportunity to subject them to cross-examination. Parties shall appear before the court below on 3.10.2013. It is made clear that the matter being an old one, the court below shall dispose of the matter, as expeditiously as possible, at any rate, within four months from the date of receipt of records. Sd/- B. KEMAL PASHA, JUDGE ul/- [True copy] P.S. to Judge

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