

Karuna Hire Purchasing and Leasing Vs. State of Kerala

Karuna Hire Purchasing and Leasing Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/1125637

Court : Kerala

Decided On : Jan-28-2014

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Karuna Hire Purchasing and Leasing

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD TUESDAY, THE 28TH DAY OF JANUARY 2014 8TH MAGHA, 1935 CRL.A.No. 301 of 2003 () -----

CC8601997 of JUDICIAL FIRST CLASS MAGISTRATE COURT.-I MUVATUPUZHA APPELLANT(S)/PETITIONER/COMPLAINANT::

----- KARUNA HIRE PURCHASING & LEASING, VELLOORKUNNAM, MUVATTUPUZHA REPRESENTED BY SHAJU.V. PAUL, MANAGING DIRECTOR KARUNA HIRE PURCHASING & LEASING, MUVATTUPUZHA. BY ADV. SRI.PEEYUS A.KOTTAM RESPONDENT(S)/RESPONDENTS/STATE & ACCUSED::

----- 1. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF, KERALA ERNAKULAM.

2. RAJU GEORGE, S/O. CHACKO GOERGE, PADINJAREDATH HOUSE, MANNATHOOR P.O. R1 BY ADV.PUBLIC PROSECUTOR SHRI N.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28-01-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: A.HARIPRASAD, J.

----- Crl.Appeal No.301 of 2003
----- Dated this the 28th day of January, 2014.

JUDGMENT

Appeal filed under Section 378(4) of the Code of Criminal Procedure.

2. Appellant is a hire purchase and leasing company. Appellant is aggrieved by the dismissal of a private complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (for short, "Act") before the learned Judicial First Class Magistrate-I, Muvattupuzha. Learned Magistrate dismissed the complaint finding that the cheque in question was a blank one issued by the accused at the time of availing a vehicle loan from the appellant. Consequently, it was also found that there was no legally enforceable debt and, hence the prosecution is not maintainable.

3. Heard the learned counsel for the appellant. There was no representation for the 2nd respondent/accused.

4. Case in the complaint, stated shortly, is the following: Accused borrowed an amount of `64,200/- from the complainant firm for purchasing a vehicle. In discharge of that liability, accused issued Ext.P1 cheque. When that was presented for collection, it was dishonoured. Hence Ext.P4 lawyer notice was issued. Accused Crl.Appeal No.301/2003 2 caused to send a reply notice which is marked as Ext.D8. After considering the evidence, learned Magistrate dismissed the complaint for the above mentioned reasons.

5. Learned counsel for the appellant submitted that the reasoning of the court below for dismissing the complaint is totally incorrect and legally unsustainable. PW1 is the managing partner of the firm. His definite case is that the accused borrowed the amount for purchase of a vehicle. There was a hire purchase agreement between the firm and the accused. Liability outstanding was `64,200/-.

Thereafter the cheque was presented for collection which was dishonoured. Case of the accused that two cheques were issued at the time of execution of hire purchase agreement was denied by PW1. His evidence does not show any reason to infer that the disputed cheque was issued as a security at the time of executing the hire purchase agreement. DW1 is the accused himself. He stated that the cheque in question was a blank signed cheque issued at the time of executing the agreement. In this context, it is relevant to note that there is no dispute for the accused that he availed a loan from the complainant's firm and there was outstandings in the loan account. Learned counsel for the appellant would contend that the terms and conditions in the hire purchase agreement clearly show that the vehicle should not be transferred to a third party without the consent of the Crl.Appeal No.301/2003 3 financier. DW3 is the purchaser of the vehicle. DW3 has no case that before purchasing the vehicle from the accused, the firm had given consent for the same. DW1 when cross examined, feigned ignorance as to whether there was any clause in the hire purchase agreement restricting transfer of the vehicle without permission of the firm. He was cross examined on the aspect that the disputed cheque was not issued as security. He admitted that he was not aware as to whether he should have obtained any receipt for issuing blank cheques. Ext.D7 is the cheque leaf produced by the accused. In cross examination he has no case that the cheque leaves were regularly used. DW2 is an attesor to the hire purchase agreement. Although he has stated that two signed blank cheques were issued by the accused to the complainant, he could not convincingly state the reasons for remembering the same. He was not aware of the details of the cheque and he admitted that he was unable to identify the cheque. Considering the evidence tendered by the defence witnesses, it cannot be held that the cheques in question were blank signed cheques at the time of executing the hire purchase agreement.

6. Learned counsel for the appellant contended that court below went wrong in dismissing the complaint solely depending on the evidence tendered by the defence witnesses that the cheque was issued as a security for the hire purchase transaction. It is indisputable that the transfer Crl.Appeal No.301/2003 4 of vehicle which is subject to hire purchase agreement can only be made with the consent of the financier. In this case, the accused has no case either that he sought consent

or that the complainant had given consent for transferring the vehicle. Merely for the reason that the vehicle has been transferred, it cannot be held that the cheque, if it was issued for discharge of a legally enforceable liability, will automatically become unenforceable. Learned counsel for the appellant contended that the availability of other avenues for recovery of the liability will not absolve the criminal liability which has arisen against the accused. Totality of evidence would show that the contention of the accused that the cheque was issued as a security cannot be accepted. The cheque in question was issued to discharge a liability existed between the accused and the complainant. . Fact that it was dishonoured for insufficiency of funds is not disputed. Statutory requirements before filing a complaint have also been taken. On analyzing the evidence in this case, I am of the opinion that the learned Magistrate committed a legal error in finding that the cheque in question was not issued to discharge a legally enforceable debt. Therefore the finding has to be reversed. Learned Magistrate having dismissed the complaint had no occasion to apply his mind regarding the conviction and quantum of sentence. Though I find that the 2nd respondent/accused has committed the offence, I am of the view that imposition of sentence is not warranted Crl.Appeal No.301/2003 5 in this case. In the result, the appeal is allowed. Judgment passed by the learned Judicial First Class Magistrate-I, Muvattupuzha in C.C.No.860 of 1997 is hereby reversed. 2nd respondent/accused is convicted under Section 138 of the Act. He shall pay a fine of `64,200/- in this matter. In the event of recovery of fine, it shall be paid to the complainant. If the fine is not paid or recovered, the accused shall undergo simple imprisonment for a period of three months. All pending interlocutory applications will stand dismissed. A. HARIPRASAD, JUDGE. cks Crl.Appeal No.301/2003 6 A.HARIPRASAD, J.

Crl.Appeal No.301/2003

JUDGMENT

28h January, 2014

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com