Jocab Thomas Vs. Prasad and Another

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SooperKanoon Citation : sooperkanoon.com/1125993

Court : Kerala

Decided On : Feb-03-2014

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Jocab Thomas

Respondent : Prasad and Another

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD MONDAY,THE3D DAY OF FEBRUARY201414TH MAGHA, 1935 CRL.A.No. 73 of 2008 ( ) ------------------------- CC2991998 of CHIEF JUDICIAL MAGISTRATECOURT.PATHANAMTHITTA APPELLANT(S)/COMPLAINANT:: -- 1. JACOB THOMAS, AGED76YEARS, S/O. THOMAS, NEELAMBILALIL, KOTTATHOOR P.O. AYROOR. (DIED) (*)2.THOMAS JACOB, S/O.JACOB THOMAS, RESIDING ATF3, NAVIN SUBHIKSHAAPARTMENTS, 20/16, MEHTA NAGAR, MAIN ROAD, CHENNAI - 600 029 (*) IS IMPLEADED AS2D ADDITIONALAPPELLANT IN CRL.A.73/08 AS PER

ORDER

DT.14/11/12 IN CRL.M.A.7479/12. BY ADV. SRI.S.MUHAMMED HANEEFF RESPONDENT(S)/APPELLANTS & RESPONDENT/ACCUSED & COMPLAINANT:

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1. PRASAD, S/O. HARIHARAPUTHRAN PILLAI, MARAKKARAVEEDU, KAITHAKKODI P.O.,KOTTATHOOR AYROOR VILLAGE, PATHANAMTHITTA.

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM. R1 BYADV.DR.K.P.KYLASANATHA PILLAY (SENIOR ADVOCATE) R1 BYADV.SMT.SREEDEVI KYLASANATH BY ADV. SMT.V.J.SAFEENA BY ADV. SRI.R.SELVAKUMAR R2 BY PUBLIC PROSECUTOR SHRI K.K.RAJEEV THIS CRIMINALAPPEAL HAVING BEEN FINALLYHEARD ON0302-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: A.HARIPRASAD, J.

------------------------------------- Crl.Appeal No.73 of 2008 ------------------------------------- Dated this the 3rd day of February, 2014.

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

2. Complainant in C.C.No.299 of 1998 of Chief Judicial Magistrate Magistrate Court, Pathanamthitta aggrieved by the dismissal of the complaint under Section 138 of the Negotiable Instruments Act (for short, "Act") preferred this appeal. During the pendency of the appeal, the complainant died. His legal heir is impleaded as the additional 2nd appellant.

3. Case in the complaint, stated shortly, is that the accused borrowed an amount of `1,86,000/- from the appellant/complainant and in discharge of that liability, a cheque was issued on 19.06.1998 at the instance of the complainant. When the cheque was presented for collection, it was dishonoured due to insufficiency of funds in the account of the accused. Although, statutory notice was issued, no reply was sent by the accused. After stipulated time, the complaint was filed before the trial court. PW1 is the complainant. Exts.P1 to P8 were marked. There was no defence evidence. Crl.Appeal No.73/2008 2 4. Heard the learned counsel for the appellant/complainant and the learned counsel for the respondent/accused.

5. Trial court raised the following points for consideration: "(i) Whether the accused had borrowed a sum of Rs.1,86,000/- from PW1, the complainant at his residence at Kottathoor and that in discharge of the said debt, he issued Ext.P1 dated 19--6--1998 in favour of PW1 drawn on the Indian Overseas Bank, Ayirur branch as alleged? (ii) Whether Ext.P1 is supported by consideration? (iii) Whether the case of the accused that when he demanded money from the complainant, he gave a signed blank cheque in advance to him, that subsequently he did not receive the money and that when the cheque was demanded back, it was stated by PW1 that it was lost is true? (iv) Whether the accused is guilty of the offence punishable under section 138 of the Negotiable Instruments Act? (v) What is the sentence or order to be passed against the accused?" 6. While answering points 1 to 3, court below found that there is discrepancy in the case of the appellant raised in the complaint and at the time of adducing oral evidence. Court below found that in paragraph 1 of Crl.Appeal No.73/2008 3 the complaint, it is mentioned that on 19.06.1998 the disputed cheque was issued at the residence of the complainant. When the sworn statement of the complainant was taken, he adhered to the version in the complaint. However, when he was examined as PW1, he deposed that the accused incurred a liability on 12.10.1997. He also deposed that when money was advanced, one Varghese was present in the house of the complainant. Court below found fault with the complaint in not examining the said Varghese to prove the transaction. I cannot agree with the view taken by the court below on this aspect as Section 118(a) of the Act was not considered by the court below. It says that until the contrary is proved, it shall be presumed that every negotiable instrument was made or drawn for consideration and that every such instrument when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred, for consideration. It is interesting to note that the case of the accused at the time of examination under Section 313 Cr.P.C. that he issued a blank cheque without receiving any consideration is a development subsequently made, which does not find a place in the cross examination of PW1. For the above reason, I find that the finding of the court below that non-examination of a witness to prove the loan transaction is totally unsustainable.

7. Court below found that the entire transaction happened on Crl.Appeal No.73/2008 4 12.10.1997 and the evidence tendered by the complainant that the

cheque was presented before the bank on 19.06.1997 is against the averment in paragraph 2 of the complaint . On perusal of the entire evidence, I am of the view that the court below failed to appreciate the case of the complainant that the cheque was issued on 19.06.1998 though the amount was paid on 12.10.1997. The complainant when examined as PW1 in the chief examination committed a mistake in the date of the cheque. Instead of 09.06.1998 he deposed that the cheque was issued on 16.06.1998, which he immediately corrected. Learned counsel for the appellant contended that the appellant/complainant was 70 years of old at the time of examination. Merely on a slip of his tongue, the complaint cannot be thrown over the board if there are clinging documents to establish the relevant dates. Case of the accused that the cheque was issued as a security also cannot be legally accepted for the reason that going by his own case, no amount was given by the complainant and a cheque was issued only in respect of the future advance. If that be so, there cannot be any issuance of a cheque as a security since there was no dischargeable liability at the time of issuance of cheque. Considering the facts and circumstances, I find that acquittal of the accused was an unmerited one. In the result, the appeal is allowed. Accused is convicted for an offence punishable under Section 138 of the Act. He shall undergo Crl.Appeal No.73/2008 5 imprisonment till the rising of the court and shall appear before the trial court to suffer the sentence on 17.03.2014. He shall further pay compensation of `1,86,000/- (Rupees One lakh and Eightysix thousand only) to the complainant under Section 357(3) Cr.P.C. If the accused fails to pay compensation amount, it shall be recovered as if it is a fine imposed. A. HARIPRASAD, JUDGE. cks