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K.Narayanan Vs. K.M.Pradeep Kumar

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Court : Kerala

Decided On : Jan-30-2014

Judge : Honourable Mr.Justice M.L.Joseph Francis

Appellant : K.Narayanan

Respondent : K.M.Pradeep Kumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE M.L.JOSEPH FRANCIS THURSDAY, THE30H DAY OF JANUARY201410TH MAGHA, 1935 Crl.Rev.Pet.No. 1096 of 2003 () ---------- AGAINST THE

JUDGMENT
IN CRA2392000 of ADDL.SESSIONS COURT (FAST TRACK)-II, PALAKKAD AGAINST THE

ORDER
IN ST15391998 of J.M.F.C.-I,PALAKKAD REVISION PETITIONERS/APPELLANTS/ACCUSED:
---------- 1. K.NARAYANAN, S/O.KANDAN, PRESIDENT, SCHEDULED CASTE CO-OPERATIVE SOCIETY LTD. NO.1024, THENKURISSI PANCHAYAT, THENKURISSI, PALAKKAD DISTRICT.

2. K.PONNUKUTTAN, S/O.KULLAN, SECRETARY, SCHEDULED CASTE CO-OPERATIVE SOCIETY LTD. NO.1024, THENKURISSI PANCHAYAT, THENKURISSI, PALAKKAD DISTRICT. BY ADVS.SRI.P.VIJAYA BHANU SRI.TONY MATHEW SRI.C.B.MUKUNDAN RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE: ---------- 1. K.M.PRADEEP KUMAR, S/O.MADHAVAN, MADHAVA NIVAS, PALLIPURAM, KALUMPUZHA, VADAKKANTHARA AMSOM, PALAKKAD DISTRICT.

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. R2 BY PUBLIC PROSECUTOR, SHRI LIJU V.STEPHEN THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON2801-2014, THE COURT ON301-2014 PASSED THE FOLLOWING: M.L. JOSEPH FRANCIS J., - Crl.R.P. No.1096 of 2003 - Dated this the 30th day of January 2014

ORDER

The revision petitioners herein are the accused in S.T. No.1539 of 1998 of the Court of the Judicial Magistrate of First Class-I, Palakkad.

2. S.T. No.1539 of 1998 arose upon a private complaint filed by the first respondent herein against the accused alleging commission of offences punishable under Section 138 of Negotiable Instruments Act (in short 'the NI Act').

3. The case of the complainant is that on 21.11.1996 the complainant deposited `10,000/- in the Scheduled Caste Service Co-operative Society Limited No.1024 of Thenkurissi Crl.R.P. No.1096 of 2003 :2: Panchayat for interest at the rate of 10%. The accused are the President and Secretary respectively of the above Bank and when the complainant demanded the amount so deposited the accused on 30.8.1997 issued a cheque bearing No.2803 drawn on the District Co-operative Bank Limited, Kuzhalmannam Branch and on presentation of the above cheque it was returned dishonoured for the reason that there is no sufficient fund to honour the cheque. The complainant issued notice on 9.10.1997 and informed the dishonour of the cheque and demanded payment. On receipt of notice they sent a

reply raising false and untenable contentions. No amount was paid. Therefore, a complaint was filed by the complainant under Section 138 of the NI Act.

4. Before the Magistrate Court, PW1 and PW2 were examined and Ext. Nos.1 to 7 were marked on the side of the complainant. No evidence was adduced from the defence side. Crl.R.P. No.1096 of 2003 :3: The learned Magistrate on considering the evidence on record convicted the accused Nos.1 and 2 under Section 138 of the NI Act and they were sentenced to undergo rigorous imprisonment for three months each and to pay a compensation of `6,000/- each to the complainant under Section 357(3) of the Code of Criminal Procedure. Against that conviction and sentence the accused Nos.1 and 2 filed Criminal Appeal No.239 of 2000 before the Additional Sessions (Fast Track - II) Court, Palakkad which was dismissed confirming the conviction and sentence. Against that judgment, the appellants/accused filed this Crl.R.P.

5. Heard the learned counsel for the revision petitioners. At the time of argument, the learned counsel for the revision petitioners raised the following contentions. The courts below went wrong in not finding that since Ext.P1 cheque belongs to the Society, that Society ought to have been made as a party along with the accused. The courts below ought to have held Crl.R.P. No.1096 of 2003 :4: that prosecution against the person in charge of the business of a company is sustainable only if the company is also made an accused. The courts below erred in not finding that the officer mentioned in Sub section (2) of Section 141 of the NI Act can be made liable only if the prosecution proves that the company committed the offences with the consent or connivance of the officer or due to any negligence attributed to him. Here there is no evidence to prove that the offence was committed with the consent or connivance of the accused.

6. The learned counsel for the revision petitioners invited my attention to a Three Judge Bench decision of the Supreme Court reported in Aneeta Hada v. M/s. Godfather Travels and Tours Pvt. Ltd. [2012(2) KLT736(SC), in which it was held: "For maintaining the prosecution under S. 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only Crl.R.P. No.1096 of 2003 :5: be brought in the dragnet on the touchstone of vicarious

liability as the same has been stipulated in the provision itself." 7. The learned counsel for the revision petitioners invited my attention to the decision of this court reported in Mahesh Kumar v. Taxi Drivers Co-operative Society Ltd. (2010(4) KLT544), in which it was held: "None of the accused can be convicted for offence under Section 138 of the Negotiable Instruments Act, 1881 since no notice is issued to the society (A1) under Section 138(b), the society cannot be convicted for offence under Section 138 of NI Act. The main offender is the society and it cannot be convicted. No person who is stated to be in charge of the society can also be convicted. It is only if the society (A1) is found guilty under Section 138 of the NI Act, the person who are referred to in Section 141 also will be deemed to be guilty of offence under Section 138 of the NI Act. In this case, no notice is issued under Section 138(b) of the NI Act to the Society and in the absence of issuance of such notice no offence will lie against society under Section 138 of the NI Act. Since society is not liable, its Crl.R.P. No.1096 of 2003 :6: President and Secretary also cannot be made liable." 8. In the present case, the Scheduled Caste Co-operative Society is not arrayed as an accused and no notice was issued to that Society under Section 138(b) of the NI Act. Therefore that Society cannot be convicted for the offence under Section 138 of the NI Act. If only the Society is found guilty under Section 138 of the NI Act, accused Nos.1 and 2 will be deemed to be guilty of the offence under Section 138 of the NI Act. Since the Society has not committed the offence under Section 138 of the NI Act, the conviction and sentence of accused Nos.1 and 2 under Section 138 of the NI Act has to be set aside. Accordingly this Crl. R.P. is allowed. The conviction and sentence of accused Nos.1 and 2 in S.T. No.1539 of 1998 on the file of Judicial Magistrate of First Class-I, Palakkad under Section 138 of the NI Act is set aside and they are found not guilty and acquitted and they are set at liberty. Their bail Crl.R.P. No.1096 of 2003 :7: bonds are cancelled. If the accused have deposited any amount before the Trial court, they are allowed to get back that amount. Sd/- M. L. JOSEPH FRANCIS, (JUDGE) dl/

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