

Babu Mathew Vs. Rajan

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Court : Kerala

Decided On : Feb-14-2014

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Babu Mathew

Respondent : Rajan

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD FRIDAY,THE14H DAY OF FEBRUARY201425TH MAGHA, 1935 CRL.A.No. 1245 of 2006 () ----- CC3591999 of ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT (ECONOMIC OFFENCES),ERNAKULAM APPELLANT(S)/COMPLAINANT: ----- BABU MATHEW, PROPRIETOR, BABU MATHEW AND CO., MATHEW SONS BUILDING KALOOR, KOCHI-17. BY ADV. SRI.SHAJI P.CHALY RESPONDENT(S)/ACCUSED AND STATE: ----- 1. RAJAN, 47/1018, ASOKA ROAD, KALOOR, KOCHI-17.

2. STATE OF KERALA, REP.BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. R1 BYADV.SRI.SUNNY MATHEW PALAKKATTUKUNNEL R2 BY PUBLIC PROSECUTOR SHRI K.K.RAJEEV THIS CRIMINALAPPEAL HAVING BEEN FINALLYHEARD ON1402-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: A.HARIPRASAD, J.

JUDGMENT

Appeal filed under Section 378 (4) of the Code of Criminal Procedure (for short, "Cr.P.C.") 2. Appellant preferred a complaint under Section 138 of the Negotiable Instruments Act (for short, "the Act") before the trial court against the accused (1st respondent). The case of the complainant, in short, is as follows: Complainant is a share broker. He had dealings with the accused. In the course of business transactions, accused owed an amount of `2,16,560.29 towards the complainant. In partial discharge of that liability, Ext.P1 cheque for `50,000/- was issued by the accused to the complainant. When the cheque was presented for collection, it was returned dishonoured for insufficiency of funds in the account of the accused. Statutory notice was issued by the complainant to the accused for which no reply was sent. Since no payment was made within the stipulated time, the complaint was filed. Before the trial court, power of attorney of the complainant testified as PW1. Exts.P1 to P7 were marked. Forensic Science Laboratory report (FSL report) was marked as court's Crl.Appeal No.1245/2006 2 exhibit. Exts.D1 to D4 were marked on the side of the defence.

3. Heard the learned counsel for the appellant/complainant and the learned counsel for the 1st respondent/accused. Learned Public Prosecutor also was heard.

4. It is seen from the judgment of the court below that the complaint was dismissed and the accused was acquitted finding that Ext.P1 cheque was materially altered and thereby rendered the cheque void under Section 87 of the Act. Section 87 of the Act reads as follows: "Effect of material alteration.-Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties; Alteration by indorsee.- And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof. The provisions of this section are subject to those of sections 20, 49, 86

and 125." 5. PW1 was cross-examined on this point. The definite suggestion put to PW1 was that the cheque in question originally bore a date 28.02.1997. It was corrected as 28.02.1998 by altering the last digit '7' to '8'. Accused, therefore, contended that the cheque had become stale Crl.Appeal No.1245/2006 3 long before the presentment in the bank. PW1 denied the case of the accused that the complainant had materially altered the cheque.

6. The disputed cheque was sent to the Forensic Science Laboratory, Thiruvananthapuram for examination and report. Ext.C1 is the report sent by the Director, Forensic Science Laboratory, Thiruvananthapuram. It was prepared by the Assistant Director (Documents-Civil), Forensic Science Laboratory, Thiruvananthapuram. Relevant portion of the report reads as follows: "2. The questioned item marked Q1 is a figure read as '98' occurring in a cheque bearing No.171311 of the State Bank of India, Kaloor. The other questioned item marked Q2 is figures read as '2-4-98' occurs in a cheque return memo of S.B.I., Kaloor. The questioned items were subjected to examination under different lighting conditions such as direct light, oblique light, u.v. light, I.R. light, Blue light, etc. using Vedio spectral comparator and zoom stereo microscope. On examination it is seen that the original figure '7' in the questioned item marked Q1 has been altered to '8' by adding appropriate stroke using black ink. Hence the original date of cheque could be deciphered as '28-02-97'.

3. On further examination of the questioned item marked Q2 it is seen that the figure '3' in the date portion has been altered to '2' by overwriting." Crl.Appeal No.1245/2006 4 Learned trial Judge relied on this report rightly under Section 293 Cr.P.C. The competence of the expert cannot be questioned going by the provisions under Section 293 Cr.P.C. . The complainant has not taken any step to summon the author of Ext.C1 and to cross-examine her to disprove the contents in Ext.C1.

7. Court below placed reliance on the Division Bench decision of this Court in Bhaskaran Chandrasekharan v. Radhakrishnan (1998 (1) KLT881. Interpreting Section 87 of the Act, this Court laid down the following proposition: "There is no case for the defendant that either his signature or the amount or the payee's name

has been altered in the cheque. He has no case that the cheque has not been issued. It is his only case that plaintiff has put the date, and that would amount to material alteration. Alteration of the date in the cheque may be material alteration. Alteration may have the effect of lengthening the period of limitation or shortening it. So also alteration of payee's name is material which affects the character of the instrument, and so also the relationship of the parties. So also the alteration of signature as well as the amount. All this would amount to material alteration. The general rule is that a material alteration renders the negotiable instrument void. However, if an alteration is made with the consent of CrI.Appeal No.1245/2006 5 the drawer of the cheque, it may not amount to material alteration, because the holder of the undated cheque has got the implied authority to put the date on the cheque. Once the date is shown on the cheque, the burden is on the drawer of the cheque to prove that the payee has no authority to do so." I have carefully examined the disputed cheque and the report of the Assistant Director of Forensic Science Laboratory and I am convinced that the cheque had been materially altered. Further, the complainant has no case that the accused permitted to make the alteration of the date in Ext.P1. Actually the case of the complainant is that there was no material alteration effected after getting the cheque in his hand. However, the complainant failed to prove this aspect of his case. I do not find any legal reason to interfere with the finding of the trial court.

8. Learned counsel for the accused relied on unreported decisions of learned Single Judge in CrI.Appeal Nos.2426 of 2007, 2749 of 2009, 1349 of 2009, 44 of 2008 and 583 of 2002 to contend that this Court had consistently taken a view that the prosecution has to fail if it is found to be on the basis of a cheque, which has been materially altered.

9. Learned counsel for the appellant argued that no reply was caused to be sent on behalf of the accused in spite of receiving the statutory notice. Learned counsel for the accused would reply that it will CrI.Appeal No.1245/2006 6 not enable a complainant to get away with a materially altered cheque. Mere non-sending a reply cannot be taken as a factor strengthening the case of the complainant. To buttress this contention, decision of this Court in Yohannan v. Sabu (2012 (3) KLT SN31Case No.32) is relied on. I am in agreement with the above decision that

mere non-replying to the statutory notice cannot empower the complainant to prosecute a person on the basis of a materially altered cheque.

10. Considering the facts and circumstances of the case I find that there is no legal reason available to interfere with the finding of the trial court that the prosecution is not maintainable as Ext.P1 cheque was materially altered at the time of presenting it for collection. Only on account of that material alteration the cheque could be said to have not become a stale one. Otherwise it would have been treated as a stale cheque. Viewing from that angle also I find that the prosecution is not maintainable. In the result, the appeal is dismissed. All pending interlocutory applications will stand dismissed. A. HARIPRASAD, JUDGE. cks

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