

Sunil Kumar Vs. State of Kerala

Sunil Kumar Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/1128907

Court : Kerala

Decided On : Feb-20-2014

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

Appellant : Sunil Kumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE M.L.JOSEPH FRANCIS THURSDAY, THE 20TH DAY OF FEBRUARY 2014 1ST PHALGUNA, 1935 CrI.Rev.Pet.No. 371 of 2014 () ----- CRA4612005 of ADDL. SESSIONS JUDGE, ALAPPUZHA. CC1042004 of J.M.F.C., AMBALAPUZHA REVISION PETITIONER/APPELLANT/ACCUSED:-: SUNIL KUMAR, AGED 45 YEARS S/O.KUTTAPPAN, THEKKEKUTTU VEETIL, EDATHUA VILLAGE KUTANAD TALUK, ALAPPUZHA DISTRICT. BY ADVS.SRI.M.V.THAMBAN SRI.R.REJI SMT.THARA THAMBAN SRI.B.BIPIN RESPONDENTS/RESPONDENTS/STATE & COMPLAINANT:-:

1. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031.

2. JOSEPH VARGHESE, PUTHENPURACKAL VEEDU, PANDANGARI MURI, EDATHUA VILLAGE KUTTANAD TALUK, ALAPPUZHA DISTRICT, PIN - 689 573.

R2 BY ADV. SMT.T.V.NEEMA R2 BY ADV. SRI.N.SUNIL JOSEPH R1 BY PUBLIC PROSECUTOR SMT.BINDU GOPINATH. THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 2002- 2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: M.L.JOSEPH FRANCIS, J.

----- Crl.R.P. No.371 of 2014
----- Dated 20th February, 2014

ORDER

This Revision petition is filed by the accused in C.C.No.104/04 on the file of the Judicial First Class Magistrate, Ambalappuzha, challenging the conviction and sentence passed against him for the offence punishable under Section 138 of N.I. Act. The cheque amount was `50,000/- In the Trial Court, the accused was sentenced to undergo simple imprisonment for six months. The accused was also directed to pay the cheque amount of `50,000/- as compensation to the complainant under Section 357 of the Code of Criminal Procedure. The appeal against that conviction and sentence was dismissed.

2. Heard the learned counsel for the revision petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the revision petitioner reiterated the same contention raised before the Trial Court and the appellate court.

4. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the Crl.R.P. No.371 of 2014 2 complainant, that the complainant had validly complied with clauses (a) and (b) of the proviso to Section 138 of the N.I. Act and that the Revision petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the conviction. The said conviction has been recorded after a careful evaluation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the conviction so recorded concurrently by the courts below and the same is hereby confirmed.

5. In the decision reported in Damodar S. Prabhu v. Sayed Babalal (2010(2) KHC428(SC)), it was held that in a case of dishonour of cheques, compensatory aspect of the remedy should be given priority over the punitive aspect. Considering the facts and circumstances of the case, I am of the view that sentencing the accused to pay a fine of ` 50,000/- would meet the ends of justice. Accordingly, the accused is CrI.R.P. No.371 of 2014 3 sentenced to pay a fine of `50,000/-. The said fine shall be paid as compensation under Section 357(1) of Cr.P.C. The Revision petitioner is permitted either to deposit the said fine amount before the Court below or directly pay the compensation to the complainant within six months from today and to produce a memo to that effect before the Trial Court in case of direct payment. If he fails to deposit or pay the said amount within the aforesaid period, he shall suffer simple imprisonment for three months by way of default sentence. The amount if any deposited in the trial court by the accused can be given credit to.

6. In the result, this Revision petition is disposed of confirming the conviction entered by modifying the sentence imposed on the revision petitioner. Sd/- M.L.JOSEPH FRANCIS, JUDGE. tgs (true copy)

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