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Ayyappan Vs. Radha and Another

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Court : Kerala

Decided On : May-26-2014

Judge : Honourable Mr. Justice P.Ubaid

Appellant : Ayyappan

Respondent : Radha and Another

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID MONDAY, THE26H DAY OF MAY20145TH JYAISHTA, 1936 Crl.Rev.Pet.No. 2702 of 2011 ---------- AGAINST THE

JUDGMENT
IN CRA502010 of ADDL. SESSIONS JUDGE, FAST TRACT (ADHOC2, THRISSUR DATED2206-2011 & AGAINST THE

JUDGMENT
IN CC10432006 of JUDICIAL FIRST CLASS MAGISTRATE COURT-I,THRISSUR DATED3110-2009 REVISION PETITIONER/ACCUSED: ---------- A.AYYAPPAN, S/O.NARAYANAN NAIR, KOMBATHVEETTIL HOUSE, CHERUVATHERY, CHEVOOR P.O, THRISSUR DISTRICT. BY ADVS.SRI.P.SANTHOSH (PODUVAL) SMT.R.RAJITHA RESPONDENTS/COMPLAINANT: ---------- 1. RADHA,

W/O.RAVINDRANATHAN, EDATHILVALAPPIL HOUSE, CHIYYARAM DESOM, KOORKKENCHERRY VILLAGE, THRISSUR TALUK - 680 001 2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 68 2031. R1 BY ADV. SRI.RAJESH CHAKYAT BY PUBLIC PROSECUTOR SMT.BINDU GOPINATH THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON2605-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: ab P.UBAID, J.

---------- Crl.R.P No.2702 of 2011 ---------- Dated this the 26th day of May, 2014

ORDER

On an indictment under Section 138 of the Negotiable Instruments Act the revision petitioner herein faced trail before the Judicial First Class Magistrate Court-I, Thrissur in C.C No.1043/2006. Prosecution was initiated by the 1st respondent herein on the allegation that a cheque for 2,00,000/- issued by the revision petitioner in discharge of the amount borrowed by him happened to be dishonoured due to insufficiency of funds, and inspite of statutory notice, the revision petitioner did not make payment of the cheque amount.

2. The revision petitioner pleaded not guilty in the trail court, and claimed to be tried. The complainant examined himself as PW1 and marked Exts.P1 to P5 during trial. When examined under Section 113 Cr.P.C the revision petitioner denied the incriminating circumstances. In defence two witnesses were examined on his side and Exts.D1 to D7 were marked. On an appreciation of oral and documentary evidence, Crl.R.P No.2702 of 2011 2 the trial court found the revision petitioner guilty under Section 138 N.I Act. On conviction thereunder he was sentenced to undergo simple imprisonment for three months, and was also directed to pay a compensation of 2,00,000/- to the complainant under Section 357(3).

3. Aggrieved by the conviction and sentence the revision petitioner approached the Court of Session, Thrissur with Crl.A No.50/2010. In appeal the learned Addl. Session Judge Adhoc-II, Thrissur confirmed the conviction but modified the

sentence. Accordingly, the sentence was reduced to imprisonment till rising of the court while maintaining the direction to pay compensation. Now the revision petitioner is before this Court, challenging the legality and propriety of the conviction and sentence in this revision.

4. Pending this proceedings the parties expressed willingness to have the dispute resolved amicably by mediation. Accordingly the case was referred to mediation, and the parties earnestly took part in the process of mediation. But the report of mediation submitted by the mediator is not something that can be enforced under the law, as a report of amicable settlement or resolution of the dispute forever. As the said report does not Crl.R.P No.2702 of 2011 3 contain a resolution of the dispute forever, it is not acceptable to this Court, and so this revision is being decided on merits. However, in view of the amicable settlement the learned counsel for the revision petitioner made a request to grant time for one year to make payment of compensation. This was not opposed by the other side. I also feel that some reasonable time will have to be granted to the revision petitioner to make payment of the compensation.

5. The complainant has given definite evidence proving the transaction of borrowal, and she has also given evidence regarding the issuance of Ext.P1 cheque. This evidence stands not discredited. The evidence adduced in defence by the accused will not prove or probabilise his case or rebut the presumption under Section 139 of N.I Act. Ext.P2 document will show that the cheque in question was bounced due to insufficiency of funds in the account of the revision petitioner. Ext.P3 statutory notice was sent by the complainant in time and the complaint was also filed well within time. Accordingly, compliance of the statutory requirements for prosecution stands proved. I find that Ext.P1 cheque was issued by the revision petitioner in discharge of a legally enforceable Crl.R.P No.2702 of 2011 4 debt of 2,00,000/- and it was bounced due to insufficiency of funds in his account. Failre to make payment of the cheque amount, inspite of statutory notice, also stands proved. I find no scope for interference in the conviction, on the ground of any illegality or irregularity.

6. As regards sentence also no interference is called for because what is imposed practically in appeal is the minimum possible under the law, and a further modification by this Court in revision is not possible. Direction to pay compensation made by the court below is with a view to do substantial justice to the complainant, who has not so far received anything from the revision petitioner in discharge of the liability.

7. I am inclined to grant time for one year to the revision petitioner, as requested by the learned counsel when the dispute practically stands settled, though a composition as such is not legally possible. I find that this revision is liable to be dismissed. In the result, this revision petition is dismissed, confirming the conviction against the revision petitioner under Section 138 of N.I Act in C.C.No.1043/2006 of the Judicial First Crl.R.P No.2702 of 2011 5 Class Magistrate Court-I, Thrissur, and also confirming the sentence. However, the revision petitioner is granted time for one year to make payment of the compensation ordered by the court below voluntarily, on failure of which the trial court shall take steps to recover the amount of compensation or enforce the default sentence. As regards the sentence to undergo imprisonment till rising of the court, the revision petitioner is directed to surrender and serve out the sentence within one month. In case of failure to make payment of compensation within one year, the complainant can move the trial court for enforcement of the direction regarding compensation. The complainant is permitted to withdraw the amount of 35,000/- already deposited by the revision petitioner in the trial court, and only the balance shall be payable as compensation. The Criminal Revision Petition is dismissed as above. Sd/- P.UBAID JUDGE //True Copy// ab P.A to Judge

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