

Purushothaman Vs. Radhakrishnan

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Court : Kerala

Decided On : May-28-2014

Judge : Honourable Mr. Justice P.Ubaid

Appellant : Purushothaman

Respondent : Radhakrishnan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID WEDNESDAY, THE 28TH DAY OF MAY 2014 7TH JYAISHTA, 1936 CrI.Rev.Pet.No. 956 of 2014 () ----- CRL.A. NO.755/2008 OF II ADDITIONAL SESSIONS COURT, PALAKKAD ST. NO.360/2007 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-III, PALAKKAD. REVISION PETITIONER/APPELLANT/ACCUSED:

----- PURUSHOTHAMAN, AGED 54 YEARS, S/O.KOCHUNNY, QUS.NO.369/A, RLY. COLONY, KALLEKKULANGARA, OLAVAKKODE, PALAKKAD DISTRICT. BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL). RESPONDENTS/RESPONDENTS/STATE AND COMPLAINANT: ----- 1. RADHAKRISHNAN, AGED 49 YEARS, S/O.KUNJU, POTTAKKULAM, KAVILPPAD, PALAKKAD-678 301.

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031. R2 BY PUBLIC PROSECUTOR MR.C.K. JAYAKUMAR. THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 28.05-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: rs. P.UBAID, J.

----- Crl.R.P No.956 of 2014
----- Dated this the 28th day of May, 2014

ORDER

A cheque issued by the revision petitioner in favour of the 1st respondent herein for 35,000/- was bounced due to insufficiency of funds. In spite of statutory notice, he did not make payment of the cheque amount to the 1st respondent. In such a circumstance, the 1st respondent filed a complaint against the revision petitioner before the Judicial First Magistrate Court III, Palakkad as S.T.No.360/2007.

2. The revision petitioner entered appearance in the trial court and pleaded not guilty. The complainant examined himself as PW1 during trial, and also marked Exts.P1 to P4. The revision petitioner denied the incriminating circumstances when examined under Section 313 Cr.P.C. However, no evidence was adduced by him in defence.

3. On an appreciation of the evidence adduced by the complainant, the trial court found the revision petitioner guilty under Section 138 of N.I Act. On conviction thereunder he Crl.R.P No.956 of 2014 2 was sentenced to pay a fine of 35,000/-, or in default to undergo simple imprisonment for one month. The entire amount of fine, if realised, was ordered to be paid as compensation to the complainant.

4. Aggrieved by the conviction and sentence the revision petitioner approached the Court of Session, Palakkad with Crl.A. No.755/2008. In appeal, the learned II Additional Sessions Judge, Palakkad confirmed the conviction and sentence, and accordingly dismissed the Criminal Appeal by judgment dated 29.6.2010. Now the accused is before this Court in revision, challenging the legality and propriety of the conviction and sentence.

5. In spite of notice on admission the 1st respondent did not turn up to contest the revision. On hearing the learned counsel for the revision petitioner and on a perusal of the case records, I find no reason or ground to admit the revision to files. The complainant has given definite and consistent evidence proving the alleged transaction of borrowal, and also the issuance of Ext.P1 cheque in discharge of the said debt. The revision petitioner has no explanation how the cheque bearing his signature came in the hands of the complainant, if not CrI.R.P No.956 of 2014 3 handed over in discharge of any debt or liability. Ext.P2 memo will show that the cheque was bounced due to insufficiency of funds. The revision petitioner has no case otherwise that it was bounced on some other ground, or that he had sufficient funds in his account to honour the cheque. He has no case that he had made payment of the cheque amount as demanded in Ext.P3 notice sent by the complainant in time. The defence pleaded by the revision petitioner is that he had borrowed an amount of 10,000/- from one Abdul Majeed, and the cheque in question was in fact handed over as a security in the said transaction. But such a case pleaded by the revision petitioner stands not in any manner proved or probablised. I find that the complainant has well proved his case, and he has also proved compliance of the statutory requirements for prosecution. I find that Ext.P2 cheque was issued by the revision petitioner in discharge of the amount borrowed by him from the complainant, and it was bounced due to insufficiency of funds. I find no illegality or illegality in the conviction or in the sentence.

7. The learned counsel for the revision petitioner made a request to grant time for four months to make payment of the fine amount. Of course the complainant is absent. CrI.R.P No.956 of 2014 4 However, I feel that two months' time can be granted to the revision petitioner. Subject to this, this revision petition can be dismissed. In the result, this Criminal Revision Petition is dismissed in limine, without being admitted to files. However, the revision petitioner is granted time for two months from this date to surrender before the trial court, to serve out the sentence, and to make payment of the fine amount voluntarily, on failure of which steps shall be taken by the trial court to enforce the sentence and to recover the amount of fine, or impose the default sentence, as provided under the law.

P.UBAID JUDGE ab

