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Santhosh Vs. Krishnaprasad A.

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Court : Kerala

Decided On : May-28-2014

Judge : Honourable Mr. Justice P.Ubaid

Appellant : Santhosh

Respondent : Krishnaprasad A.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID WEDNESDAY, THE28H DAY OF MAY20147TH JYAISHTA, 1936 Crl.Rev.Pet.No. 841 of 2014 ---------- CRL.APPEAL NO. 43/2012 OF ADDL.SESSIONS COURT, PALAKKAD DATED2011-2013 ..... CC NO. 179/2010 OF JUDICIAL FIRST CLASS MAGISTRATE COURT II, PALAKKAD DATED1701-2012 ..... REVISION PETITIONER/APPELLANT/ACCUSED: ---------- SANTHOSH, S/O. SWAMINATHAN, 'RAMAN NIVAS', KANNOTTUKAVU, PIRAYIRI POST, PALAKKAD DISTRICT. BY ADVS.SRI.A.R.GANGADAS SRI.M.L.SURESH KUMAR RESPONDENTS/RESPONDENTS/COMPLAINANT & STATE: ---------- 1. KRISHNAPRASAD A., S/O. GOPALAKRISHNAN, ACHARATH HOUSE, KADAMPAZHIPPURAM POST, PALAKKAD.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA. R2 BY SR. PUBLIC PROSECUTOR SMT. LILLY LESLIE THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON2805-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Kss P.UBAID, J.

---------- Crl.R.P No.841 of 2014 ---------- Dated this the 28th day of May, 2014

ORDER

The revision petitioner challenges the conviction and sentence against him under Section 138 of N.I Act in C.C.No.179/2010 of the Judicial First Class Magistrate Court II, Palakkad. Complaint, alleging the said offence, was filed in the trial court by the 1st respondent herein. His case is that a cheque for 1,18,000/- issued in his favour by the revision petitioner in discharge of the amount borrowed by him on 4.11.2006 was dishonoured due to insufficiency of funds, and inspite of statutory notice the revision petitioner failed to make payment of the cheque amount.

2. The revisoin petitioner pleaded not guilty in the trial court and claimed to be tried. During trial, the complainant examined himself as PW1 and marked Exts.P1 to P7. When examined under Section 313 Cr.P.C also the revision petitioner denied the incriminating circumstances. However, no evidence was adduced by him in defence. Crl.R.P No.841 of 2014 2 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 was he was sentenced to undergo simple imprisonment for six months, and was also directed to pay 1,18,000/- to the complainant as compensation under Section 357(3) Cr.P.C.

4. Aggrieved by the conviction and sentence the revision petitioner approached the Court of Session, Palakkad with Crl.A. No.43/2012. In appeal the learned Additional Sessions Judge, Palakked confirmed the conviction, however modified the sentence by reducing the substantive sentence to imprisonment till rising of the court. The direction to pay compensation was maintained in appeal. Now the accused is before this Court in revision, challenging the legality and propriety of

the conviction and sentence.

5. Notice on admission was given to the 1st respondent in this proceedings. Inspite of notice he remained absent. On hearing the learned counsel for the revision petitioner and on a perusal of the case records, I find no reason to admit the revision to files. The complainant has given definite Crl.R.P No.841 of 2014 3 and consistent evidence proving the alleged transaction of borrowal, and also the issuance of Ext.P2 cheque. The case of the complainant, on facts, is further proved by Ext.P1 promissory note executed by the revision petitioner when the amount was borrowed. In fact the revision petitioner would practically admit his signature in Ext.P1 promissory note, and in Ext.P2 cheque. He has no convincing and satisfactory explanation how the cheque in question came in the hands of the complainant, if not handed over in discharge of any debt or liability. Exts.P3 and P4 documents will show that the cheque in question was bounced due to insufficiency of funds. The revision petitioner has no case otherwise that it was bounced on some other grounds, or that he had sufficient funds in his account to honour the cheque. Ext.P5 statutory notice was sent by the complainant in time, and the complaint was filed well within time. The revision petitioner has no explanation why he did not send reply to the statutory notice, and he has no case that he had paid the cheque amount as demanded in the notice. Thus I find that the complainant has well proved his case, and that the revision petitioner was rightly convicted under Section 138 of N.I Act. Compliance of the Crl.R.P No.841 of 2014 4 statutory requirements for prosecution also stands proved. I do not find any illegality or illegality in the conviction or in the sentence for interference in revision. The sentence imposed by the appellate court is the minimum possible under the law, and the 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 initiated any civil action, with the hope that he will get the amount by way of compensation.

7. The learned counsel for the revision petitioner made a request to grant some reasonable time to the revision petitioner to make payment of the compensation in the trial court. In the particular facts and circumstances, I feel that some reasonable time can be granted to the revision petitioner. Subject to this, this revision petition can be dismissed in limine. In the result, this Criminal Revision

Petition is dismissed in limine, without being admitted to files. However, the revision petitioner is granted time for four months from this date to surrender before the trial court, to serve out the sentence, and to make payment of the compensation voluntarily, on failure of which steps shall be taken by the trial court to Crl.R.P No.841 of 2014 5 enforce the sentence and to recover the amount of compensation, or impose the default sentence. The amount if any deposited by the revision petitioner in the trial court or in the appellate court can be deducted from the total amount of compensation to be deposited in the trial court. P.UBAID, JUDGE ab

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