

Prajeesh Vs. Saravanan

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Court : Kerala

Decided On : Jun-04-2014

Judge : Honourable Mr. Justice P.Ubaid

Appellant : Prajeesh

Respondent : Saravanan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE
HONOURABLE MR. JUSTICE P.UBAID WEDNESDAY, THE 4TH DAY OF
JUNE 2014 14TH JYAISHTA, 1936 Crl.Rev.Pet.No. 910 of 2014 ()
----- AGAINST THE

JUDGMENT

IN CC8292009 of J.M.F.C.-III, PALAKKAD AGAINST THE

JUDGMENT

IN CRL.A82013 ADDL SESSIONS COURT-II, PALAKKAD REVISION
PETITIONER(S)/APPELLANT/ACCUSED:

----- PRAJEESH AGED 30 YEARS
S/O.SANKARANKUTTY, SOBHANAM, MLA ROAD NEMMARA, PALAKKAD BY
ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL) RESPONDENT(S)/STATE:
----- 1. SARAVANAN, AGED 35 YEARS S/O.K.C.MUTHU,
KALAMPUZHA, PALLIPURAM MELMURI, PALAKKAD 679307 2. STATE OF

KERALA REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM682031 R2 BY PUBLIC PROSECUTOR SMT.BINDU GOPINATH THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON0406-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: ma P.UBAID, J.

~~~~~ Crl.R.P No. 910 of 2014 ~~~~~ Dated this the 4th June, 2014

## ORDER

Conviction and sentence under Section 138 of the Negotiable Instruments Act are under challenge in this revision, brought by the accused. Prosecution was initiated by the 1st respondent before the Judicial First Class Magistrate-III, Palakkad, on a complaint alleging that a cheque for 30,000/- issued by the revision petitioner in discharge of a debt incurred by him was dishonoured due to insufficiency of funds, and he failed to make payment in spite of statutory notice.

2. The revision petitioner pleaded not guilty during trial, and when examined under Section 313 Cr.P.C also, he denied the incriminating circumstances. The complainant examined himself as PW1 and also marked Exts. P1 to P4. No evidence in defence was adduced by the revision petitioner. On an appreciation of the evidence adduced by the complainant, the trial court found him guilty under Section 138 of the Negotiable Instruments Act. On Crl.R.P No. 910 of 2014 2 conviction thereunder, he was sentenced to undergo imprisonment till rising of court and also to pay a fine of 30,000/-.

3. Aggrieved by the conviction and sentence, the revision petitioner preferred appeal before the Court of Session, Palakkad as CrlA. 8 of 2013. But, in appeal, the learned Second Additional Sessions Judge confirmed the conviction and sentence, and accordingly dismissed the appeal. Now the accused is before this Court in revision challenging the legality and propriety of the conviction and sentence.

4. 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 this revision to files. The complainant has given definite evidence proving the transaction in which debt was incurred by the revision petitioner, and also proving the issuance of Ext.P1 cheque in discharge of the said debt. Ext.P2 document will show that the cheque was bounced due to insufficiency of funds in the account of the revision petitioner. Ext.P3 notice was sent CrI.R.P No. 910 of 2014 3 by the complainant in time and the complaint was also filed in time. The revision petitioner has no case that he had made payment as demanded in the notice. The revision petitioner has also no case that he had funds in his account to honour the cheque or that the cheque was bounced on some other ground. Thus, I find that the complainant has well proved his case on facts to the satisfaction of the court. The offence punishable under Section 138 of the Negotiable Instruments Act stands well proved with the necessary elements including the statutory requirements. I find no illegality or irregularity or impropriety in the conviction or in the sentence. The trial court has imposed the minimum sentence. Direction to pay the fine amount to the complainant as compensation was made with the object of doing substantial justice to the complainant. This direction also does not require any interference in revision.

5. The learned counsel for the revision petitioner made a request to grant some reasonable time to the revision petitioner to pay the amount of fine in the trial court. Of course, in the particular facts and circumstances, CrI.R.P No. 910 of 2014 4 I feel that some reasonable time can be granted. Subject to this, this revision can be dismissed in limine. In the result, this revision petition is dismissed in limine, without being admitted to files. However, the revision petitioner is granted time for two months time to surrender before the trial court to serve out the sentence and to remit the amount of fine, on failure of which, steps shall be taken by the trial court to enforce the sentence and recover the amount of fine. Sd/-  
P.UBAID JUDGE ma /True copy/ P.S to Judge