

Narayanankutty Vs. V. Sundareswaran

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SooperKanoon Citation : sooperkanoon.com/1153537

Court : Kerala

Decided On : Jun-27-2014

Judge : Honourable Mr. Justice P.Ubaid

Appellant : Narayanankutty

Respondent : V. Sundareswaran

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID FRIDAY, THE 27TH DAY OF JUNE 2014 6TH ASHADHA, 1936` CrI.Rev.Pet.No. 1143 of 2014 () ----- CRA372011 of II ADDL. SESSIONS COURT, PALAKKAD IN ST14372009 of JUDICIAL FIRST CLASS MAGISTRATE COURT, CHITTUR ----- REVISION PETITIONER-APPELLANT-ACCUSED: ----- NARAYANANKUTTY, AGED 49 YEARS, S/O. RAMAN, PARAKKATTUKALAM HOUSE, MOOTHANCHETTIKULAMBU, THATTAMANGALAM, CHITTUR BY ADVS. SRI. S. EASWARAN SRI. P. MURALEEDHARAN (IRIMPANAM) SRI. M. A. AUGUSTINE RESPONDENTS-RESPONDENTS-COMPLAINANT & STATE: ----- 1. V. SUNDARESWARAN, AGED 64 YEARS, S/O. VELU, VARIYATHUKALAM HOUSE, KARIPPODE, PUDUNAGARAM, CHITTUR 678101 2. THE STATE REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM 682031 R1 BY ADV. SRI. V. A. JOHNSON

(VARIKKAPPALLIL) R2 BY PUBLIC PROSECUTOR SMT. R. REMA THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 27.06.2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: BP P.UBAID, J.

~~~~~ CrI.R.P. No.1143 of 2014 ~~~~~ Dated this the 27th June, 2014

## ORDER

The revision petitioner challenges the conviction and sentence against him under Section 138 of the Negotiable Instruments Act in S.T1437 of 2009 of the Judicial First Class Magistrate, Chittur. A cheque for 30,000/- issued by him in discharge of the amount borrowed from the 1st respondent was dishonoured due to insufficiency of funds. The 1st respondent made demand by statutory notice, but the revision petitioner did not pay the amount. Then he filed a complaint before the court below alleging the offence punishable under Section 138 of the Negotiable Instruments Act.

2. The revision petitioner entered appearance and pleaded not guilty to the accusations. When examined under Section 313 Cr.P.C also, he denied the incriminating circumstances. However, he did not adduce any evidence in defence. On an appreciation of the evidence, the learned Magistrate found him guilty. On conviction, he was CrI.R.P. No.1143 of 2014 2 sentenced to pay a fine of 34,000/-. From out of the total fine amount, 33,000/- was ordered to be paid as compensation to the complainant under Section 357 (1) (b) of Cr.P.C.

3. Aggrieved by the conviction and sentence, the revision petitioner approached the Court of Session, Palakkad with CrI.A. No.37 of 2011. In appeal, the learned Second Additional Sessions Judge confirmed the conviction and sentence, and accordingly dismissed the Criminal Appeal. Now, he is before this Court in revision challenging the legality and propriety of the conviction and sentence.

4. On hearing both sides, and on a perusal of the case records, I find no reason or ground to admit this revision to files. The complainant examined as PW1 during

trial has given definite, and consistent evidence proving the debt incurred by the revision petitioner and also proving the execution of Ext.P1 cheque in dispute. This evidence stands not discredited. Exts.P2 and P3 documents will show that the cheque in question was bounced due to insufficiency of funds. It has come out in evidence that the CrI.R.P. No.1143 of 2014 3 complainant had earlier brought a complaint against the revision petitioner as ST. No.1523 of 2007. In that case, the parties compounded the offence. This fact is proved by Exts.P6 and P7 documents. Of course, this will not prove the present case. Ext.P4 statutory notice was sent by the complainant in time, but the revision petitioner did not make reply. He has no explanation why he did not send reply, and he has also no case that he had sufficient funds in his account, or that the cheque issued by him was bounced on some other ground. The complaint was also filed within time by the complainant. The revision petitioner has no material to rebut the presumption available to the complainant under Section 139 of the Negotiable Instruments Act. Thus, I find, on facts that the complainant has well proved his case with all the necessary elements and ingredients. He has also proved compliance of the statutory requirements in initiating prosecution. I find no irregularity or illegality or impropriety in the conviction or in the sentence made by the courts below. The sentence in this case is only a fine sentence. With a view to do justice to CrI.R.P. No.1143 of 2014 4 the complainant, payment of compensation from out of the fine amount is also ordered. The revision petitioner cannot be heard to complain that he is aggrieved by the sentence.

5. The learned counsel for the revision petitioner made a request to grant some reasonable time for making payment of fine in the trial court. I feel that some reasonable time can be granted in the particular circumstances. Subject to this, the revision can be dismissed without being admitted to files. 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 to remit the amount of fine in the trial court, voluntarily, on failure of which, steps shall be taken by the trial court to recover the amount of fine, or enforce the default sentence. Sd/- P.UBAID JUDGE  
ma /True copy/ P.S to Judge