Sooraj Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1161914

Court : Kerala

Decided On : Aug-12-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Sooraj

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN TUESDAY, THE12H DAY OF AUGUST201421ST SRAVANA, 1936 Crl.MC.No. 2094 of 2014 () -------------------------- (M.P.NO.84/2014 IN CC.NO.426/2011 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -II, ALUVA) --------------------------- PETITIONER/ACCUSED: -------------------------------------- SOORAJ.A, PARAPPURATH HOUSE, VATTEKUNNAM, MUTTAR, EDAPPALLY NORTH P.O., ERNAKULAM, PIN - 682 024 BY ADV. SRI.M.A.SHIHAB RESPONDENT(S)/COMPLAINANT: --- 1. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURTOF KERALA, ERNAKULAM.

2. SHAFEEK K.P, KARUVALLY HOUSE, COCHIN UNIVERSITY P.O., ERNAKULAM-682 022. R1 BY PUBLIC PROSECUTOR SMT. S.HYMA R2 BY ADV. SRI.SAIJU S. THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON1208-2014, THE COURT ON THE SAME DAY PASSED THE

FOLLOWING: sts Crl.MC.No. 2094 of 2014 () ------------------------------------ APPENDIX PETITIONER(S)' ANNEXURES: --- ANNEX-A1: THE TRUE COPY OF THE COMPLAINT FILED BY THE2D RESPONDENT NUMBERED AS C.C.NO.426/2011 IN THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT - II, ALUVA. ANNEX-A2: THE TRUE COPY OF THE STATEMENTS GIVEN BY THE2D RESPONDENT AS PW1 ANNEX-A3: THE TRUE COPY OF THE PETITION NUMBERED AS MP NO.84/14 FILED BEFORE THE JFCM-II, ALUVA. ANNEX-A4: THE ORIGINAL OF THE

ORDER
DATED213.2014 IN MP NO.84/2014 IN C.C.NO.426/2011 PASSED BY THE JFCM-II, ALUVA. ANNEX-A5&5(A): TRUE COPIES OF THE EXT.P1 PROMISSORY NOTE AND EXT.P2 CHEQUE MARKED FROM THE SIDE OF THE2D RESPONDENT BY THE LOWER COURT. RESPONDENT(S)' ANNEXURES: NIL /TRUE COPY/ P.A.TO.JUDGE sts K. Ramakrishnan, J.

=============================== Crl.M.C.No.2094 of 2014 =============================== Dated this, the 12th day of August, 2014.

ORDER

This is an application filed by the petitioner who is accused in C.C.No.426/11 on the file of Judicial First Class Magistrate Court, No-II, Aluva to set aside the order in Crl.M.P.No.84/14 under Section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that petitioner was the accused in C.C.No.426/11 on the file of Judicial First Class Magistrate Court, No-II, Aluva which was filed by the second respondent herein alleging that the petitioner has committed the offence punishable under Section 138 of the Negotiable Instruments Act. The case of the complainant was that the petitioner owed some amount to him and for that purpose, he had executed a promissory note and in discharge of that liability, he had issued the disputed cheque as well and the cheque was presented, but dishonoured for the reason 'no such account' and later, it was corrected as 'account closed' and in spite of notice issued, the accused had not paid the

2. : amount. So, the petitioner has committed the offence punishable under Section 138 of the Negotiable Instruments Act. The complainant was examined as PW1 and disputed cheque was marked as Ext.P2 and the promissory note was marked as Ext.P1. When the complainant was in the box, he had admitted that the signature in the promissory note as well as the cheque were that of the petitioner and they were singed in his presence. The case of the petitioner was that he had no such transaction and the cheque was fraudulently taken and his signature was forged and misusing the cheque and on the basis of a forged promissory note, the present complaint has been filed. He had stated so in his 313 examination as well. Since there was dispute regarding the execution of the cheque, in order to prove that the signature in the cheque was not that of the accused, the petitioner filed Crl.M.P.No.84/14 for sending the disputed cheque and the specimen signature to expert opinion and that was dismissed by the learned magistrate by Annexure A4 order which is being challenged by the petitioner by filing this petition.

3. Heard the Counsel for the petitioner and the learned Counsel appearing for the second respondent and the learned

3. : Public Prosecutor.

4. The Counsel for the petitioner submitted that since he had disputed the execution of the cheque itself and there is an admission on the part of the complainant that the cheque was signed in his presence, in order to disprove the same, it is necessary to send the disputed cheque for expert opinion. In fact, there was no delay on the part of the petitioner in filing the application. Immediately after the accused was examined, he filed the application. But, the learned magistrate had dismissed the application on the ground that it is filed belatedly and the attempt of the petitioner only to prolong the case which is not correct.

5. The Counsel for the second respondent submitted that the case is of the year 2011, and if the accused had a case that his signature was forged, he could have file the application even before the defence evidence was started or even at the time when he appeared before the court which he had not done. The filing of the

application at the later stage of the case is only with an intention to protract the proceedings and nothing more. Further, since the attempt of the accused is to take advantage of some difference in the signature in Ext.P2 Crl.M.C.No.2094 of 2014 :

4. : and Ext.P1 and for that purpose, it need not be sent for expert opinion as the court itself can consider that and pass appropriate orders regarding the execution of the cheque. Learned Public Prosecutor supported the submission of the Counsel for the second respondent.

6. It is an admitted fact that the second respondent had filed a private complaint against the petitioner on the basis of a cheque said to have been given by him alleging offences under Section 138 of the Negotiable Instruments Act. The case of the complainant was that, there was some amount due from the accused and for that he had executed a promissory note and in discharge of that liability, he had issued the disputed Ext.P2 cheque as well. The case of the accused who is the petitioner herein is a case of total denial. It is true that petitioner has filed the application after adducing the defence evidence as DW1. But, it may be mentioned here that in the cross examination of the complainant, he had admitted that the signature in the cheque as well as the promissory note were put by the accused in his presence and it was executed in his presence and it is also in a way admitted PW1 in the cross examination that there is some difference in the signature in Crl.M.C.No.2094 of 2014 :

5. : Ext.P1 & P2. But, according to him, both the signatures were put by the accused in his presence. But, this aspect was denied by the accused. It is true that when the execution of the cheque is denied, the burden is on the complainant to prove the execution of the cheque by adducing evidence. But that will not bar the accused to adduce evidence for disproving the case of the complainant as well. Further, under Section 243(2) of Code of Criminal Procedure, the accused also has got an opportunity or right to adduce defence evidence. When the accused had a case that he had not executed the cheque and in order to disprove the case of the complainant that it was signed in his presence if he want to adduce evidence by sending the cheque for expert opinion which is one of the mode by which he can prove his innocence that should not be denied by the court. He will

be getting an opportunity to adduce evidence only after the complainant's evidence is over. So, merely because, no petition was filed even at the time when he appeared on getting summons is not a ground to reject the application which he had filed at a later stage to send the cheque for expert opinion to disprove the case of the complainant that it was executed by him. (See the decisions Crl.M.C.No.2094 of 2014 :

6. : reported in Bindu Vs. Sreekantan Nair [2007 (1) KLT525 and Kalyani Bhaskar Vs. Sampoornam [2007 (1) KLT SN31(Case No.40)]. So, under the circumstances, the reasons stated by the court below for rejecting the application is unsustainable in law and the same is liable to be set aside and the application has to be allowed for giving an opportunity to prove the defence case that the cheque was not executed by him by sending the cheque for expert opinion under Section 45 of the Evidence Act. So, the petition is allowed and the impugned Annexure A4 order in Crl.M.P.No.84/14 in C.C.No.426/11 dismissing the application by the lower court is set aside and the same is allowed. The learned magistrate is directed to collect the standard signature of the accused and forward Ext.P1 & P2 along with the standard signature to the expert for getting the opinion on that aspect. The petitioner is directed to take steps to produce the standard signature of the petitioner during the relevant time namely, the date of execution of the cheque or during the alleged transaction so as to enable the expert to come to a correct conclusion as to whether the signature of the accused and the signature in the cheque are one and the same Crl.M.C.No.2094 of 2014 :

7. : so as to help the court to come to the a correct conclusion in this aspect. The petitioner is directed to take all these steps within one week from the date on which he is directed to appear before the court by this court and immediately on getting this, the lower court is directed to send the same to the Regional Forensic Science Laboratories, Thrissur to get the expert opinion on this aspect fixing the time limit for the report from that Laboratory after getting the expert opinion and dispose the case in accordance with law. Parties are directed to appear before court below on 22.08.2014. Office is directed to communicate this order to the concerned court immediately. With the above direction and observation, the petition is disposed of. Hand over a coy of the order to both the Counsels so as to

enable them to produce the same before the court blow. Sd/- K.Ramakrishnan, Judge. Bb [True copy] P.A to Judge