

Pankajakshan Vs. Sumesh

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Court : Kerala

Decided On : Oct-29-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Pankajakshan

Respondent : Sumesh

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE
HONOURABLE MR. JUSTICE K.RAMAKRISHNAN WEDNESDAY, THE 29^H DAY
OF OCTOBER 2014 7TH KARTHIKA, 1936 CrI.Rev.Pet.No. 1842 of 2014 ()
----- AGAINST THE

ORDER

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JUDGMENT

IN CRIMINAL APPEAL NO. 415/2013 OF II-ADDITIONAL SESSIONS JUDGE,
KOZHIKODE, DATED 25-06-2014 ----- AGAINST THE

ORDER

/

JUDGMENT

IN S.T.NO. 291/2011 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
PAYYOLI ----- REVISION

PETITIONER(S)/APPELLANT/ACCUSED:

----- PANKAJAKSHAN,
AGED 46 YEARS, S/O. KUNHIRAMAN, TEACHER NADUPARAMBATH, HOUSE,
MOKERI.P.O., KAKKATTIL VIA, MOKERI AMSOM DESOM, VATAKARA
THALUK. BY ADV. SRI.ZUBAIR PULIKKOOL
RESPONDENTS/RESPONDENTS/COMPLAINANT&STATE:

----- 1. SUMESH,
S/O.KANARAN, AGED 31 YEARS, BUSINESS, RESIDING AT VANIATH VEETIL
HOUSE, AYANIKKAD.P.O. IRINGAL AMSOM AND AYANIKKAD DESOM OF
KOZHIKODE, PIN-673521.

2. STATE KERALA REP. BY PUBLIC PROSECUTOR HIGH COURT OF KERALA,
ERNAKULAM, PIN-682031. BY SRI.N.SURESH, PUBLIC PROSECUTOR THIS
CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 29.10-
2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: R.AV
K.RAMAKRISHNAN, J ----- CrI.R.P.Nos.1842 OF 2014 & 1844
OF 2014----- Dated this the 29th day of October,
2014

ORDER

----- Accused in ST.No.291/2011 and ST.No.160/2011 both on the file of
Judicial First Class Magistrate Court, Payyoli are the revision petitioner herein.

2. The cases before the court below were taken on file on the basis of separate
private complaints filed by the first respondent herein as complainant against the
revision petitioner in both the cases under Section 138 of the Negotiable
Instruments Act (hereinafter called the Act).

3. The case of the complainant in both the cases was that the revision petitioner
borrowed a sum of `2 lakhs and agreed to return the same within 11 months and
in discharge of that liability, he had issued 6 cheques for `30,000/- each and one
cheque for `20,000/- and later he had paid `20,000/- and got back the cheque for

`20,000/- . The cheques dated 05.06.2011 and 05.07.2011, two cheques for `30,000/- each were presented and they were encashed. When other four cheques namely, Exts.P1, P2, P9 and P10 were presented for collection and same were dishonoured vide Exts.P3 and P11 dishonour memos for the reason payment stopped by the drawer and the same was intimated to the complainant by his Crl.R.P.Nos.1842 OF2014& 1844 OF20142 banker vide Exts.P4 and P12 intimation letters. The complainant issued Exts.P5 and P13 lawyer notices respectively vide Exts.P6 and P14 postal receipts and they were received by the revision petitioner evidenced by Exts.P7 and P15 postal acknowledgments. The revision petitioner sent Exts.P8 and P16 reply notices for the respective notices sent when the complainant issued notice intimating dishonour and demanding payment of these cheques. He had not paid the amount. So, he had committed the offence punishable under section 138 of the Act.

4. The complainant filed two separate complaints, one complaint in respect of Exts.P1 and P2 cheques and another complaint in respect of Exts.P9 and P10 cheques and they were taken on file as ST.No.160/2011 and ST.No.291/2011 respectively and in both these cases, the revision petitioner appeared before the court below and particulars of the offences were read over and explained to him and he pleaded not guilty. Thereafter, on the basis of the application filed as Crl.M.P.No.1333/2012 in ST.No.160/2011, joint trial was allowed and evidence was recorded in ST.No.160/2011. The complainant in both the cases was examined as PW1 and the bank manager was examined as PW2 and Exts.P1 to P16 and X1 to X3 series were marked on his side. After closure of the complainant's evidence, the revision petitioner was questioned under section 313 of the Code of Criminal Procedure Crl.R.P.Nos.1842 OF2014& 1844 OF20143 (herein after called the Code) and he denied all the incriminating circumstances brought against him in the complainant's evidence. He had further stated that he had no transaction with the complainant and the cheques somehow stolen by the complainant were misused and the present complaints were filed. No evidence was adduced on the side of the accused in defence. After considering the evidence on record, the trial court found the revision petitioner guilty in both the cases under section 138 of the Act and convicted him thereunder and sentenced him to undergo simple imprisonment to till rising of court and also further sentence

to pay the cheque amount of `60,000/- each in both the cases as fine with default sentence of one month simple imprisonment each and directed the fine amount if realised to be paid to the complainant as compensation under section 357 (1) of the Code. Though, the revision petitioner filed Crl. Appeal Nos.416 of 2013 and 415 of 2013 before the Sessions Court, Kozhikode which were made over to II Additional Sessions Court, Kozhikode for disposal, the learned II Additional Sessions Judge dismissed the appeals confirming the order of conviction and sentence passed by the court below in both the cases. Aggrieved by the same, the above revisions were filed by the revision petitioner. Since both cases arose out of a common judgment based on common evidence, this court felt that the above revisions can be disposed of by a common Crl.R.P.Nos.1842 OF2014& 1844 OF20144 order.

5. Considering the scope of enquiry available on the concurrent findings of the court below, this court felt that the revisions can be disposed of at the admission itself after hearing the counsel for the revision petitioner and the learned Public Prosecutor appearing for the second respondent dispensing with notice to the first respondent in both the cases.

6. The counsel appearing for the revision petitioner submitted that the courts below have not properly appreciated the nature of cross-examination of PW1 and wrongly applied the presumption under section 139 of the Act and convicted the revision petitioner in both the cases which is unsustainable in law.

7. The learned Public Prosecutor supported the concurrent findings of the courts, below and submitted that no interference is called for.

8. The common case of the complainant in both the cases was that, the revision petitioner borrowed a sum of `2 lakhs agreeing to repay the same within 11 months and issued six cheques for `30,000/- each with different dates and another cheque for `20,000/- in discharge of that liability. Later, the revision petitioner paid `20,000/- and obtained cheque for `20,000/- back. Two cheques for `30,000/- were presented and encashed. The other cheques when presented were dishonoured for Crl.R.P.Nos.1842 OF2014& 1844 OF20145 the reason payment stopped by the drawer and in spite of notice issued, he did not pay the

amount. So, he had filed separate complaints in respect of two cheques each. The case of the revision petitioner was that there was no transaction between him and the complainant and cheques were somehow stolen and misused. In order to prove the case of the complainant, the complainant himself was examined as PW1 and the Bank Manager was examined as PW2 and Exts.P1 to P16 and X1 to X3 series were marked on his side. Though, PW1 was cross-examined at length, nothing was brought out to discredit his evidence regarding the transaction and issuance of cheques by the revision petitioner. PW1 also deposed that except the name entire writings of the cheques were written by the accused at the time when it was given and it was also agreed by the parties that if the amount is not paid, the complainant is at liberty to write his name and present the cheque and accordingly he had entered his name in the cheques and presented the cheques which were dishonoured for the reason payment stopped by the drawer. These aspect has not been cross-examined as well. Further, Exts.X1 and X2 summoned and proved through PW2 will go to show that the other two cheques issued by the revision petitioner presented in the similar manner were encashed by the complainant and there was no objection raised by the revision petitioner in respect of the same. Further. Ext.X3 will go to show that there was no sufficient fund in Crl.R.P.Nos.1842 OF2014& 1844 OF20146 the account at the time when the cheques were presented. Though, the cheque was dishonoured for the reason payment stopped by the drawer there was no fund in the account and that be the case, the complaint under section 138 of the Act is maintainable in view of the dictum laid on in the decision in Lekshmi Dyechem Vs State of Gujarat and Another 2013 (1) KLT167(SC). Further, no acceptable evidence was adduced on the side of the revision petitioner to prove his case as well. So, under the circumstances, the courts below were perfectly justified in coming to the conclusion that the complainant had proved the borrowal of the amount and issuance of the cheques by the revision petitioner and rightly come to the conclusion that the revision petitioner had committed the offence punishable under section 138 of the Act in both the cases and convicted him thereunder and concurrent findings of the courts below on this aspect on facts do not call for any interference.

9. As regards the sentence is concerned, the courts below have only imposed imprisonment to till rising of court and the cheque amount as fine with default sentence with a direction to pay the fine amount if realised to the complainant as compensation under Section 357 (1) (b) of the Code. Maximum leniency has been shown by the courts below while imposing the sentence as well and I don't find any reason to interfere with the sentence imposed by the courts below in both the cases as it appears to be just and Crl.R.P.Nos.1842 OF2014& 1844 OF20147 proper. So, the revision petition is liable to be dismissed.

10. While this court was about to dispose of the case, the counsel appearing for the revision petitioner in both the cases prayed for time. Considering the amount involved, this court feels that total four months can be granted for the revision petitioner to pay of the amount covered by the cheques involved in both the cases. Revision petitioner is granted time till 01.03.2015 to pay the amount, till then the execution of the sentence in both the cases are directed to be kept in abeyance. With the above directions and observations, the revision petition is dismissed. Office is directed to communicate this order to the concerned court immediately.
Sd/- K.RAMAKRISHNAN, JUDGE R.AV

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