

Sindhu Vs. Mathaikutty

Sindhu Vs. Mathaikutty

SooperKanoon Citation : sooperkanoon.com/1166645

Court : Kerala

Decided On : Oct-30-2014

Judge : Honourable Mr.Justice K.Surendra Mohan

Appellant : Sindhu

Respondent : Mathaikutty

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN THURSDAY, THE 30^H DAY OF OCTOBER 2014 8TH KARTHIKA, 1936 Crl.Rev.Pet.No. 1868 of 2014 ()
----- AGAINST THE

ORDER

/

JUDGMENT

IN CRA2432011 OF ADDITIONAL SESSIONS COURT - IV, KOLLAM DATED 0707-2014 ----- AGAINST THE

ORDER

/

JUDGMENT

IN CC5222007 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
PARAVOOR, KOLLAM DATED 23/05-2013 -----
REVISION PETITIONER(S)/APPELLANT/ACCUSED:

----- SINDHU, AGED 38 YEARS,
W/O. MANILAL, RESIDING AT MANILAL MANDIRAM, MEVANAKONAM,
KALLUVATHUKKAL.P.O., KOLLAM DISTRICT BY ADVS. SRI. BINU GEORGE
SMT. HEMALATHA RESPONDENTS/RESPONDENTS/COMPLAINANT/STATE:
----- 1. MATHAIKUTTY,
AGED 63 YEARS, RESIDING AT SUSABHAVANAM, ULIYANADU, CHIRAKKARA
VILLAGE, KOLLAM DISTRICT.

2. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH
COURT OF KERALA, ERNAKULAM. BY SRI. N. SURESH, PUBLIC
PROSECUTOR THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 30/10-2014, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING: R. AV K. RAMAKRISHNAN, J ----- CrI.R.P.No.1868
OF 2014----- Dated this the 30th day of October, 2014

ORDER

----- Accused in CC.No.522/2007 on the file of the Judicial First Class Court,
Paravoor, Kollam is the revision petitioner herein.

2. The case was taken on file on the basis of a private complaint filed by the first
respondent against the revision petitioner under Section 138 of the Negotiable
Instruments Act (hereinafter called the Act). The case of the complainant in the
complaint was that the revision petitioner borrowed a sum of `1,50,000/- on
16.04.2007 and in discharge of that liability, she issued Ext.P1 cheque on the
same day drawn on Federal Bank, Kalluvathukkal Branch. The cheque when
presented was dishonoured for the reason funds insufficient vide Ext.P2 dishonour
memo dated 02.06.2007 and the same was intimated to the complainant by his
banker vide Ext.P3 intimation. The complainant issued Ext.P4 notice vide Ext.P5
postal receipt and the same was received by the revision petitioner evidenced by
Ext.P6 postal acknowledgement. She had not paid the amount. So, she had
committed the offence punishable under Section 138 of the Act. Hence the

complaint. Crl.R.P.No.1868 OF20142 3. When the revision petitioner appeared before the court below, the particulars offence were read over and explained to her and she pleaded not guilty. In order to prove the case of the complainant, the complainant himself was examined as PW1 and Exts.P1 to P6 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 (hereinafter called the Code) and she denied all the incriminating circumstances brought against her in the complainant's evidence and she had further stated that she was one of the subscriber of the chitty conducted by the complainant and when she bid the chitty, a blank signed cheque was obtained and though she paid the amount, the cheque was not returned. No other evidence was adduced on her side in defence. After considering the evidence on record, the trial court found the revision petitioner guilty under Section 138 of the Act and convicted her thereunder and sentenced her to undergo simple imprisonment to till rising of court and also to pay a fine of `1,60,000/- in default to undergo simple imprisonment for 5 months Aggrieved by the same, the revision petitioner filed Crl.Appeal No.243/2011 before the Sessions Court, Kollam which was made over to Additional Sessions Court-V, Kollam for disposal. The learned Additional Sessions Judge by the impugned judgement dismissed the appeal confirming the order of conviction and Crl.R.P.No.1868 OF20143 sentence passed by the court below. Aggrieved by the same, the present revision has been filed by the revision petitioner, accused before the court below.

4. Considering the scope of enquiry in the revision and also the question involved, this court felt that the revision petition can be disposed of at the admission stage itself after hearing the learned counsel appearing for the revision petitioner and the learned Public Prosecutor appearing for the second respondent, dispensing with notice to the first respondent.

5. The counsel for the revision petitioner submitted that the evidence of PW1 will go to show that the case of the accused is more probable than the case of the complainant and the blank signed cheque given as security for the chitty transaction has been misused and the present complaint was filed and the revision petitioner had rebutted the presumption and the courts below were not justified in

convicting her for the offence alleged.

6. On the other hand, the learned Public Prosecutor supported the concurrent findings of the courts below on this aspect.

7. The case of the complainant in the complaint was that the revision petitioner borrowed `1,50,000/- and in discharge of that liability, she had issued Ext.P1 cheque. The case of the accused was that she was a subscriber to the chitty conducted by the CrI.R.P.No.1868 OF20144 complainant and when she bid the chitty, she had given a blank signed cheque and though she repaid the amount, the cheque was not returned and misusing the cheque the present complaint was filed. In order to prove the case of the complainant, the complainant himself was examined as PW1 and though he was cross-examined at length, nothing was brought out to discredit his evidence regarding the factum of revision petitioner borrowing the amount and issuing Ext.P1 cheque in discharge that liability. He had denied the suggestion that he was conducting a private chitty and he obtained a blank signed cheque as security when the revision petitioner bid the chitty. The revision petitioner did not adduce any evidence to prove her defence. She did not even send any reply to the notice issued by the complainant when the cheque was dishonoured. So, all these things will go to show that the case put forward by the revision petitioner is not probable or believable. So, under the circumstances, the courts below were perfectly justified in relying on the evidence of pW1 and also the presumption available under section 139 and 118 of the Act and coming to the conclusion that the revision petitioner had committed the offence punishable under Section 138 of the Act and rightly convicted her for the said offence and the concurrent findings of the courts below on facts do not call for any interference.

8. As regards the sentence is concerned, the revision CrI.R.P.No.1868 OF20145 petitioner was sentenced to undergo imprisonment to till rising of court and also to pay a fine of `1,60,000/- in default to undergo simple imprisonment for 5 months by the trial court which was confirmed by the appellate court. Maximum leniency has been shown by the courts below in imposing the sentence as well. So, I don't find any reason to interfere with the sentence imposed by the courts below as well but the courts below were not justified in not directing the fine amount if realised to

be paid to the complainant as compensation which ought to have been done by the courts below. So, the fine amount if realised is directed to be paid to the complainant as compensation under section 357 (1) (b) of the Code of Criminal Procedure (herein after called the Code).

9. While this court was about to dispose of the case, the counsel appearing for the revision petitioner prayed 8 months time for payment of the amount. Considering the fact that the case is of the year 2007, this court feels that the time sought appears to be to be excessive but considering the amount involved, this court feels that six months time can be granted to the revision petitioner to pay the amount. So the revision petitioner is directed to pay the compensation directed by this Court out of the fine amount to the complainant directly or deposit the amount before the court below on or before 30.04.2015. Till then the execution of the sentence is directed to be kept in abeyance. If the compensation amount as Crl.R.P.No.1868 OF20146 directed by this court is paid directly to the complainant and the revision petitioner produces proof of such payment and that was acknowledged by the complainant before the court below, by appearing in person, then the court below is directed to treat the same as substantial compliance of the direction to pay compensation as directed by this court and the lower court is directed to record the same in the respective registers as observed in Beena V. Balakrishnan Nair and Another [2010(2) KLT1017 and Sivankutty V. John Thomas and Another [2012(4) KLT21 and permit the revision petitioner to serve the substantive sentence of imprisonment till rising of court. With the above directions and observations, the revision petition is dismissed. Office is directed to communicate this order immediately. K.RAMAKRISHNAN, JUDGE R.AV

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com