Vinitha.B vs S.Unnikrishnan

Vinitha.B vs S.Unnikrishnan

SooperKanoon Citation : sooperkanoon.com/1288436

Court : Kerala

Decided On : Jan-08-2024

Judge : Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : CRL.A/142/2006

Appellant : Vinitha.B

Respondent : S.Unnikrishnan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR MONDAY, THE 8TH DAY OF JANUARY 2024 / 18TH POUSHA, 1945 CRL.A NO. 142 OF 2006 AGAINST THE ORDER OF ACQUITTAL IN ST 743/2003 OF CHIEF JUDICIAL MAGISTRATE COURT, THIRUVANANTHAPURAM DATED 14.10.2005 APPELLANT/COMPLAINANT: B .VINITHA KRISHNAVILASOM, T.C.17/1049, OPP.S.B.T., POOJAPPURA,, ROTARY JUNCTION, POOJAPPURA, THIRUVANANTHAPURAM.12 BY ADVS. SRI.P.M.RAFIQ RESPONDENTS/ACCUSED & STATE: 1 S.UNNIKRISHNAN S/O.SUKUMARAN, UNNI NIVAS, KOLLAMKONAM, VILAPPILSALA P.O.,, THIRUVANANTHAPURAM. 2 STATE OF

KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY ADVS. PUBLIC PROSECUTOR SRI.R.V.SREEJITH ADV.SEENA C. -PUBLIC PROSECUTOR THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 08.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 08th day of January, 2024

The appellant is the complainant and the 1 st respondent is the accused in S.T. No.743/2003 on the files of the Chief Judicial Magistrate Court, Thiruvananthapuram. The offence alleged is punishable under Section 138 of the Negotiable Instruments Act, 1881. The 1 st respondent was acquitted as per the judgment dated 14.10.2005. Aggrieved by the same, the appellant preferred this appeal under Section 378(4) of the Code of Criminal Procedure, 1973.

2. Heard the learned counsel for the appellant, the learned counsel for the 1st respondent and also the learned Public Prosecutor.

3. The appellant filed a complaint with the following

allegations: The 1st respondent borrowed from the appellant an amount of Rs.95,000/- on 10.06.2003. In order to repay the said amount, the 1st respondent issued Ext.P1 cheque dated

01.11.2003. When the cheque was presented for encashment, it was returned as unpaid for want of sufficient funds with the account of the 1st respondent. Demand notice was sent on 12.11.2003 to the 1st respondent. On receipt of the notice, the 1st respondent sent a reply dated 27.11.2003, which is Ext.P7. Alleging that money due under the cheque was not repaid the complaint was filed.

4. The 1st respondent appeared and denied the

accusation. Hence, the learned Magistrate held trial and during the trial PW1 was examined and Exts.P1 to P13 were marked on the side of the appellant. On the close of the prosecution evidence, the 1st respondent was examined under Section 313(1)(b) of the Code. He has denied the incriminating circumstances appeared in evidence. He further stated as follows: He borrowed an amount of Rs.20,000/- from Nabeesa Beevi and her husband Abdul Jalil (they were later examined as DWs 1 and 2) through the brother of the appellant. At that time, two blank cheques and signed stamp paper of Rs.50/- were given. In addition, a sale deed in respect of the property of the parents of the 1st respondent was executed. In relation

to the transaction, Nabeesa Beevi had executed an agreement for resale in favour of parents of the 1 st respondent, where Ext.P1 cheque was made mention of. Making use of one of the said blank cheques, DWs 1 and 2 through the appellant had falsely initiated the present case. Further, it was contended that the suit was for specific performance was filed by the appellant. DWs 1 and 2 filed another suit as A.S. No.1708/2003 against parents of the 1 st respondent making use of the said sale deed seeking a decree of injunction.

5. The 1st respondent in order to substantiate his case examined DW1 to DW4 and produced Exts.D1 to D6.

6. The court below after considering the evidence on

record held that the presumption available under Section 118(a) and Section 139 of the NI Act in respect of Ext.P1 cheque was rebutted by the 1st respondent. Evidence of DW3, who is the brother of the appellant was essentially placed on reliance by the court below to disbelieve the assertions of the appellant that Ext.P1 was supported by sufficient consideration. The court below further observed that a suit was filed by the appellant for seeking a decree of specific performance of the agreement for sale executed by the parents

of the 1st respondent. But, for want of payment of balance court fee amounting to Rs.3,000/- the plaint therein was rejected. Rejection of the plaint itself was found to be enough to probablise the case of the 1 st respondent. After considering all such evidence, the court below concluded that the appellant initiated the prosecution making use of the cheque DWs1 and 2 obtained from the 1st respondent and the prosecution case is false. Accordingly, the 1st respondent was acquitted and further a proceedings was initiated under Section 250 of the Code. The appellant was given notice to appear before the learned Magistrate and show cause why the compensation should not be ordered to be paid to the 1st respondent.

7. The learned counsel for the appellant would submit

that the court below went wrong and entered into palpably incorrect findings by giving undue thrust to the evidence of DW3. The court below did not consider the facts that the appellant and DW3 were in enemical terms and when he had enough reasons to axe to grind against the appellant, his assertions in the court which goes against the true facts should not have been acted upon. It is submitted that the agreement allegedly executed by DW1 in favour of the parents of the 1 st

respondent was turned out to be a forged one regarding which a police case is pending. When the said agreement was examined in the Forensic Science Laboratory signature purportedly of DW1 was found to be false. That fact was not taken into account by the court below. Instead, accepting the oral testimony of DW3 as gospel truth found the case of the prosecution false. The trial court appreciated the evidence not in its proper perspective. Accordingly, the learned counsel for the appellant seeks to set aside the impugned judgment and convict the 1st respondent.

8. The learned counsel for the 1st respondent, on the

other hand, would submit that from the admissions of PW1 itself it is quite evident that the transaction was one of lending of money by DWs 1 and 2, who are money lenders, through DW3 and she (appellant) is a scrooge at the answer DWs 1 and

2. When PW1 admitted in the court that through her brother

(DW3) only she had acquaintance with the 1st respondent and

DW3 ventured to depose before the court that the appellant foisted this case in order to help DWs 1 and 2, the findings of the court below cannot be found totally incorrect.

9. This is a case where the signature in Ext.P1 cheque

is admitted. The case of the 1 st respondent is that Ext.P1 cheqe along with another cheque was issued in blank while he borrowed Rs.20,000/- from DWs 1 and 2. When the 1 st respondent admitted the signature in Ext.P1 that by itself enables the appellant to have the benefit of Section 139 of the Negotiable Instruments Act.

10. In Bir Singh [(2019) 4 SCC 197] the Apex Court

held that a meaningful reading of the provisions of the

Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. It was further held that even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

11. The Apex Court in Basalingappa [(2019) 5 SCC 418]

held that,-

23. We having noticed the ratio laid down by this Court in above cases on Section 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:-

(i) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

(ii) The presumption under Section 139 is a rebuttable

presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely

on the materials submitted by the complainant in order

to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

(v) It is not necessary for the accused to come in the witness box to support his defence.

12. Reiterating the aforesaid principles, a three Judge

Bench of the Apex Court in M/s Kalamani Tex [(2021) 5 SCC 283] held that the N.I.Act mandates that the signature of an accused on the cheque is established, then the 'reverse onus' clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him. A similar view was taken by the Apex Court in Rajesh Jain [2023 SCC OnLine SC 1275] also. It was held that Section 139 of the N.I. Act requires that the Court 'shall presume' the fact stated therein, it is obligatory on the court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. But this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary as is clear from the use of the phrase 'unless the contrary is proved'.

13. In the light of the law laid down in the aforesaid

decisions a presumption under Section 139 of the Negotiable Instruments Act in respect of Ext.P1 can legally be drawn. The questions then is whether the 1 st respondent has succeeded in rebutting the said presumption.

14. PW1 deposed in terms of her case put forth in the

complaint and during cross examination she admitted that her acquaintance with the 1st respondent was through her brother. Not only the transactions underlining in Ext.P1, but also there was another transaction between the appellant and parents of the accused during almost same period. Rs.95,000/- was claimed lent to the 1st respondent on 10.06.2003 and the cheque for repayment of the said amount was given with the date 01.11.2003. The agreement said to have been executed by the parents of the accused is dated 16.06.2003. It was based on the said agreement Ext.D4 suit was filed. The plaint in the said suit was happened to be rejected for non payment of the balance court fees. That order rejecting the plaint has, it appears, become final. Regarding the chronology in which the amount was paid to the accused and the said agreement for sale was executed by his parents, PW1 changed version more than once. Along with that her version that only through DW3 she had acquaintance with the 1st respondent has the effect of discrediting her veracity.

15. DW3 deposed that it was through him DWs 1 and 2 lent money to the 1st respondent. At the time of lending money, two blank cheques were given by the 1 st respondent

and one among which was Ext.P1. He further asserted that making use of other cheque another case was filed, the details of which also were deposed by DW3. Of course, it is pointed out that there was a criminal case initiated against DW3 at the instance of the appellant and for that reason DW3 braved to depose against the appellant. But, that contention was not accepted by the trial court, instead it was opined that same would have acted as a catalyst for DW3 to depose truth in court. When DW1 admitted that it was though DW3 only she had acquaintance with the 1st respondent and the dispute between the appellant and his brother that culminated in a criminal case was in 1998 whereas the transaction involved herein was in 2003, the aforesaid admissions of PW1 goes a long way against the case of the prosecution. Thus, there are enough materials to probablise the version of DW3 regarding lending of money by DWs 1 and 2 to the 1 st respondent although they denied that fact in court. DW1 admitted that he is a witness in the agreement for sale which is the subject matter of Ext.D4 suit. That also supports the version of the DW3. Of course, the agreement for reconveyance purportedly entered into between DW2 and the parents of the 1 st

respondent wherein Ext.P1 cheque was mentioned was found to be note a genuine one. But for that reason alone, evidence of DW3 which has sufficient support not only from the attending circumstances but also from the evidence of PW1 itself cannot be brushed aside.

16. In an appeal against acquittal, powers of appellate

Court are as wide as that of the Trial Court and it can review, reappreciate and reconsider the entire evidence brought on record by the parties and can come to its own conclusion on fact as well as on law. But it is well-established that if two views are possible on the basis of evidence on record and one favourable to the accused has been taken by the Trial Court, it ought not to be disturbed by the appellate Court. So long as the view of the trial court can be said to be reasonably formed, regardless of whether the appellate court agrees with the same or not, the verdict of the trial court cannot be interdicted and the appellate court cannot supplant the view of the trial court. (See: Chandrappa and Ors. vs. State of Karnataka, [(2007) 4 SCC 415] ; Shyam Babu vs. State of U.P.[(2012) 8 SCC 651]; Central Bureau of Investigation vs. Shyam Bihari and Ors [(2023) 8 SCC 197].

17. In the light of the law laid down in the aforesaid

decision, I am of the view that the findings of the court below are not sound and based on reliable evidence. On a re-appreciation of the evidence, different view is not possible and I find that there is absolutely no reason to interfere with the findings of the trial court leading to the acquittal of the 1 st respondent. Hence, appeal fails and it is dismissed.

18. The evidence came on record probablises that the

prosecution was initiated against the 1 st respondent without sufficient justification. Be that as it is, a proceedings under Section 250 of the Code is not a routine action. An action under Section 250 of the Code is contemplated in cases where there were no reasonable ground for making the accusation against the accused. This is a case where a cheque drawn by the 1st respondent in the account maintained by him with a Bank was happened to be with the appellant. Having given such a cheque which is a negotiable instrument carrying with it a presumption under the provisions of the Negotiable Instruments Act, he cannot be said to be wholly innocent at least in the matter of the cheque. That contributed in institution of a complaint and his prosecution.

Taking that into account, I am of the view that this is not a case where it is expedient in the interest of justice to proceed against the appellant for ordering payment of compensation to the 1st respondent. Hence, the proceedings initiated by the court below under Section 250 of the Code is set aside. Sd/- P.G.AJITHKUMAR JUDGE SMF