C.Vijayarajan vs Aboobacker

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Court : Kerala

Decided On : Apr-02-2024

Judge : Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : CRL.A/959/2011

Appellant : C.Vijayarajan

Respondent : Aboobacker

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR TUESDAY, THE 2ND DAY OF APRIL 2024 / 13TH CHAITHRA, 1946 CRL.A NO. 959 OF 2011 AGAINST THE ORDER DATED 30.05.2011 IN Crl.L.P. NO.342 OF

2011 OF HIGH COURT OF KERALA ARISING OUT OF THE JUDGMENT

DATED IN CC NO.747 OF 2006 OF JUDICIAL MAGISTRATE OF FIRST CLASS-I,MANJERI APPELLANT/DEFACTO COMPLAINANT: C.VIJAYARAJAN, S/O KANARAN CHATHANMARTHODIKA HOUSE, ARIMANAL P.O., KALIKAVU (VIA). BY ADV SRI.K.M.SATHYANATHA MENON RESPONDENTS/COMPLAINANT & STATE: 1 ABOOBACKER, S/O MUHAMMED

PAZHEDATH VEEDU, MELEKALIKAVU, KALIKAVU AMSOM, MALAPPURAM DISTRICT. 2 STATE OF KERALA REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,, ERNAKULAM-682 031. BY ADVS. SMT.GEETHA P.MENON SRI.P.B.KRISHNAN SRI.P.B.SUBRAMANYAN ADV.SHEEBA THOMAS - PUBLIC PROSECUTOR THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 02.04.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.G. AJITHKUMAR, J.

-- -- Dated this the 02nd day of April, 2024

JUDGMENT

This appeal was filed under Section 378(4) of the Code of Criminal Procedure, 1973.

2. The 1st respondent was acquitted by the Judicial

Magistrate of the 1st Class-I, Manjeri, after trial on a charge for the offences punishable under Sections 468, 417 and 420 of the Indian Penal Code, 1860. The appellant who was the defacto complainant in C.C. No.747/2006 assails the said

judgment.

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

4. The prosecution was initiated with the following allegations: On 01.06.2006 at 10.30 a.m. the 1st respondent reached the house of the appellant and borrowed an amount of

Rs.2,70,000/-. The 1st respondent had issued Ext.P1 cheque affixing his signature with the date 16.08.2006 for the discharge of that debt. The 1st respondent affixed a different signature than his genuine one with the dishonest intention of cheating the appellant. The appellant presented that cheque for encashment, but it was dishonoured for the difference in signature and then only the appellant realised that the cheque was a forged document.

5. PWs 1 to 7 were examined and Exts.P1 to P8 were proved to substantiate the charge.

6. The case set forth by the 1st respondent can be

gathered from the cross examination of the witnesses and the answers he has given during 313 examination. He has borrowed Rs.30,000/- from the appellant in 2005, and as security for that debt, he issued three blank cheques and a stamp paper worth Rs.50; all with his signatures. It was alleged that one of the said cheqes was misused to initiate this prosecution.

7. The trial court did not accept the prosecutions case. It was held that the evidence tendered by the prosecution was insufficient to prove the allegation that the 1 st respondent fraudulently induced the appellant to pay Rs.2,70,000/- to him and that Ext.P1 cheque was issued with a false signature.

8. The learned counsel for the appellant assails the

said findings by contending that when Ext.P1 cheque was returned by the bank with the endorsement that the signature of the drawer differed from his signature furnished before the bank, the dishonest intention on the part of the 1 st respondent to deceive the appellant was quite clear. Evidence of PW2, the

appellant, and PW3 a witness to the transaction was disbelieved without sufficient reason. It is submitted that the evidence of DW1 and Ext.D1 was given undue emphasize by the trial court. When the medical records showed that PW2 was discharged from the hospital in the morning itself, the version of PW3 that the money was paid to the 1 st respondent by PW2 at his house in the morning cannot be a discrepancy. Therefore, the reason assigned by the trial court to discharge the evidence regarding the money transaction is incorrect and unsustainable in law.

9. The learned counsel for the 1 st respondent

approached the issue on a different tangent. It is submitted that when the 1st respondent categorically admitted before the court that his signature in Ext.P1 was his own and it was established that the variation in the signature was non account of passage of time, no offence of forgery could be attracted. Since, the allegation of the creation of a false document by way of putting a different signature by the 1 st respondent in Ext.P1 is falsified from the evidence, the allegation of cheating does not sustain. It is further submitted that the natural variation in the signature in Ext.P1 is sufficiently substantiated through the evidence of DW2, the Bank Manager, and the specimen signature card, Ext.D2, but the prosecution did not venture to get a report from the handwriting expert in order to substantiate forging of his signature in Ext.P1.

10. The specific charge levelled against the 1 st

respondent is that at 10.30 a.m. on 01.06.2006 he reached the house of PW2 and borrowed the money. The fact that PW2 was in the hospital undergoing treatment on that day is not

disputed. The explanation of PW2 is that he was discharged in the morning itself, and therefore, no impropriety can be attributed to the case of the prosecution that the money was lent in the morning. The trial court, after adverting to the hospital records and Ext.D1, held that the evidence tendered by PWs 2 and 3 regarding payment of money was quite improbable. It was observed that the time of discharge could be at 11.35 a.m., and even so, he could not be at his house at 10.30 a.m., the time at which the money was said to have been lent. Going by Ext.D1 and the oral testimony of DW1, it is seen that the statement of PW2 was recorded by DW1 at the hospital at 2.30 p.m. on 01.03.2006.

11. The submission of the learned counsel for the

appellant that such an entry in Ext.D1 cannot be used to discard the hospital records. The entries regarding the time in those documents may not by itself is sufficient to find that such an incident did not take place. But when PW3, who is a prosecution witness, deposed in court specifically regarding the time and Ext.D1, an official document, makes the case about payment of money at such a time improbable, that

creates a genuine doubt in the case of the prosecution. Needless to say, any doubt appeared in the case of the prosecution has to go to the benefit of the accused. Therefore, the finding of the trial court that the evidence was insufficient to establish the transaction as alleged by the prosecution cannot be said to be wrong.

12. As stated, the signature in Ext.P1 is unequivocally admitted by the 1st respondent before the court. If Ext.P1 is a solitary document, such an admission can be said to be with an oblique motive. In this case, the 1 st respondent made every effort to substantiate that the signature in Ext.P1 was

his genuine signature. During cross examination PW2 admitted that the signature in Ext.P2 has similarity to the signatures put by the 1st respondent in his vakalath and bail

bond in the case. The bank authorities came to the conclusion

that the signature in Ext.P1 differs from the specimen signature after comparison of those two documents. The specimen signature was for the year 1984. Indisputably, the signature in Ext. P1 was put by the 1 st respondent in 2006. Elapsing of 22 years naturally would have caused variations in

the signature. Therefore, the case set forth by the 1 st respondent that the signature in Ext.P1 was put by him cannot be said to be quite improbable. So much so, the allegation that the 1st respondent put a different signature in Ext.P1 with the dishonest intention of deceiving the appellant cannot be accepted. Rather, the prosecution has failed to prove beyond doubt that the signature in Ext.P1 was falsely put by the 1st respondent. Once the prosecution fails to prove the creation of false documents, an offence under Section 467 of the IPC does not lie. The inevitable consequence will be that the charge for the offence of cheating also fails. In the circumstance, I find that the trial court rightly found the 1 st respondent not guilty.

13. In an appeal against acquittal, powers of appellate

Court are as wide as that of the Trial Court and it can review, re-appreciate 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].

In the light of the law laid down in the aforesaid decisions, and as I am unable to hold that the findings rendered by the trial court are perverse, no interference to the order of acquittal is possible. Hence, this appeal fails. The appeal is dismissed. Sd/- P.G. AJITHKUMAR, JUDGE SMF