

A.D.Beeshkumar vs Suresh Kumar

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Court : Kerala

Decided On : Sep-30-2023

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : CRL.A/2373/2006

Appellant : A.D.Beeshkumar

Respondent : Suresh Kumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
SATURDAY, THE 30TH DAY OF SEPTEMBER 2023 / 8TH ASWINA,
1945 AGAINST THE JUDGMENT DATED 18.07.2006 IN CRL.A
279/2006 OF SESSIONS COURT, ERNAKULAM
APPELLANT/RESPONDENT/COMPLAINANT: A.D.BEESHKUMAR
ALAKKANCHERRY HOUSE, VELI, FORT KOCHI-682 001. BY ADV
SRI.V.P.MOHAMMED NIYAZ RESPONDENTS/APPELLANT & 2ND
RESPONDENT/ACCUSED & STATE: 1 SURESH KUMAR, S/O.
RAMACHANDRAN, RESIDING IN C.C.V/966, GUJARATHI ROAD,
KOCHI-682 002. 2 STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA. R1 BY ADVS.

SRI.K.R.NARAYANA PAI SRI.V.N.VASANTH KUMAR R2 BY ADV. SRI SANAL P RAJ, PUBLIC PROSECUTOR THIS CRIMINAL APPEAL HAVING COME UP FOR HEARING ON 30.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The accused was found guilty of the offence under Section 138 of the Negotiable Instruments Act and convicted thereunder and sentenced to undergo a substantial sentence as well as a fine by the trial court. It was reversed by the First Appellate Court and found that the accused is not guilty, hence acquitted, against which the complainant came up in appeal.

2. The order of conviction for the offence

under Section 138 of the Negotiable Instruments Act was reversed by the First Appellate Court mainly on the basis of the oral evidence tendered by an independent witness (claimed to

be) DW1. He is a person who had witnessed the execution

a close friend of the accused. The version given by DW1 has its own infirmities and

improbabilities. It is a case wherein no direct evidence was tendered by the accused by mounting on the box. No such case was advanced by the accused at the time of cross-examination of PW1 though a suggestion was put up in that behalf. On the other hand, the accused had admitted the signature found affixed in the cheque as that of him and further admitted that the cheque leaf belonged to his account and was given to the

complainant. It was issued on account of the amount due to the complainant as her salary was attached being the surety for a loan transaction in which the accused is the principal debtor. The consideration, signature and cheque leaf are admitted by the accused except a case that it was issued under threat, coercion and compulsion

at the Mattancherry police station. No attempt was made to examine any of the police officers who had exerted undue influence or coercion on the accused. Even the accused did not have any case that he had made any complaint regarding any threat or coercion exerted by the Police Officials or compulsion in executing a cheque. This has to be read and appreciated with the admission made by the accused pertaining to the issuance of the cheque and signature affixed as that of him, especially when he opted to keep away from the court without giving direct evidence. From the abovesaid facts, it is clear that there is an admission on the part of the accused that the cheque was drawn and issued in favour of the complainant for the consideration stated therein and stands supported by the consideration in discharge of a debt on account of the attachment of salary of the complainant pertaining to a loan transaction wherein she stood as a

guarantor. The mere fact that the cheque was issued at the Police station may not by itself make the document invalid especially when there is no complaint preferred alleging any compulsion or threat or coercion against any of the police officials. Hence, the interested version of DW1, which suffers several infirmities ought not to have been relied on by the first appellate court for reversing the finding of guilt of the accused for the offence under Section 138 of the Negotiable Instruments Act.

Hence, the finding of acquittal by the trial court under Section 138 of the Negotiable Instruments Act by the trial court.

3. The sentence awarded was found to be improper and does not reflect the proper application of law in force, hence will stand set aside and the matter is remanded back to the

trial court for passing proper sentence in accordance with the law in force, for which the parties shall appear before the Judicial First Class Magistrate Court-I, Kochi on 27.10.2023. The Crl. Appeal will stand allowed accordingly. Sd/-
P.SOMARAJAN JUDGE SPV

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