

Venugopal vs M.S.Saseendran

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Court : Kerala

Decided On : Oct-16-2023

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : Crl.Rev.Pet/1145/2006

Appellant : Venugopal

Respondent : M.S.Saseendran

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
MONDAY, THE 16TH DAY OF OCTOBER 2023 / 24TH ASWINA, 1945
AGAINST THE JUDGMENT DATED 28.05.2002 IN CC 268/1998 OF
JUDICIAL MAGISTRATE OF FIRST CLASS -V,KOZHIKODE AGAINST
THE JUDGMENT DATED 31.01.2006 IN CRA 283/2002 OF SESSIONS
COURT, KOZHIKODE REVISION
PETITIONER/APPELLANT/ACCUSED VENUGOPAL, S/O K P
MADHAVAN, PLOT NO.23, HOUSE NO.2673, CALICUT-4.
RESPONDENTS/RESPONDENTS/COMPLAINANT: 1
M.S.SASEENDRAN, PADINJARA KOLOTH MEETHAL HOUSE,
GURUVAYOORAPPAN COLLEGE, KOZHIKODE-14 2 STATE OF

KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY ADVS. PUBLIC PROSECUTOR MANJERI SUNDERRAJ B.PREMNATH (E) SR PP SRI C N PRABHAKARAN THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 16.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

The counsel for the revision petitioner passed away. The revision petitioner remained absent and nobody was engaged so as to proceed with the revision petition. As such, this court was forced to appoint and take the assistance of an amicus curiae. Adv.Sri.Aneer M.S. was appointed as the amicus curiae.

2. Heard Adv.Sri.Aneer M.S., the amicus curiae and the Public Prosecutor.

3. The finding against the accused is under

Section 420 IPC, the aggravated form of offence of cheating, simply on the ground that the cheque was issued after closing the account, that is to say, subsequent to the closure of the account. If it is proved, it would come under the purview of cheating as defined under Section 415 IPC. But admittedly, the handwriting on the cheque is under dispute, including the date as entered in the cheque. Account was closed on 20.06.1996. The cheque is dated

07.09.1996, just two and half months after closing of the account. But it is not come out in evidence in whose handwriting the entries in the cheques were filled up, including the date of cheque, to which no evidence worth the name was adduced, except the interested testimony of PW1. Strange enough, at the box PW1 did not have any specific case as to the preparation of the cheque and in whose handwriting it was prepared. The accused took pain to mount on the box and to give direct evidence, by advancing a case that he did not have any money

transaction with PW1 and the cheque in question was in fact issued as a signed blank cheque to yet another person. So as to fasten the criminal liability under Section 420 IPC, there should be evidence regarding the date of issuance of the cheque and it is prior to closure of account or subsequent to it. The concurrent findings rendered by both the courts below, without ascertaining in whose handwriting the date of cheque was filled up, cannot be sustained. The findings of both the courts below for the offence under Section

420 IPC as against the accused and conviction and sentence awarded will stand set aside. The accused is found not guilty of any offence, hence, acquitted and set at liberty. Bail bond, if any executed, will stand cancelled. The service rendered by amicus curiae Sri. Aneer M.S. is placed on record with high appreciation. The Criminal Revision Petition will stand allowed accordingly.

Sd/- P.SOMARAJAN JUDGE msp

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