

Hyder Ali vs Sudhakaran

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Court : Kerala

Decided On : Nov-30-2023

Judge : Honourable Mrs. Justice Sophy Thomas

Appeal No. : Crl.Rev.Pet/979/2005

Appellant : Hyder Ali

Respondent : Sudhakaran

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
THURSDAY, THE 30TH DAY OF NOVEMBER 2023 / 9TH
AGRAHAYANA, CRL.REV.PET NO. 979 OF 2005 AGAINST THE
JUDGMENT DATED 12.11.2004 IN CRA 203/2004 OF SESSIONS
COURT, KASARAGOD CC 387/2002 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT, KASARAGOD REVISION
PETITIONER/APPELLANT/ACCUSED: HYDER ALI, AGED 27 YEARS,
S/O. P.A. MUHAMED KUNHI, ENIYADI HOUSE, BANDADKA VILLAGE,
KASARAGOD TALUK & DISTRICT. BY ADV SRI.T.K.VIPINDAS
RESPONDENT/RESPONDENT/COMPLAINANT: 1 SUDHAKARAN K,
AGED 35 YEARS, S/O. KUNHIRAMAN NAIR, CHERUKANNAM
HOUSE, KUNDAMKUZHI P.O., KASARAGOD TALUK. 2 THE STATE

OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

SMT.NIMA JACOB, PUBLIC PROSECUTOR THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Crl.R.P No.979 of 2005 2

ORDER

This revision is at the instance of the accused in

CC No.387 of 2002 on the file of Judicial First Class Magistrate, Kasaragod, assailing the judgment in Crl.Appeal No.203 of 2004 on the file of Sessions Court, Kasaragod, which upheld his conviction under Section 138 of the Negotiable Instruments Act (hereinafter referred as the NI Act), though modified and reduced the sentence, to certain extent.

2. CC No.387 of 2002 was based on a complaint filed by one

Mr.Sudhakaran, who is the 1st respondent herein, against the revision petitioner, alleging an offence punishable under Section 138 of the NI Act. His case was that the revision petitioner borrowed Rs.75,000/- from him, and towards discharge of that debt, issued Ext.P1 cheque dated 14.12.2001, drawn on North Malabar Gramin Bank, Bandadka Branch, assuring that the cheque would be encashed on presentation. Accordingly, the 1st respondent/complainant presented the cheque for collection, but it was returned dishonoured stating reason funds insufficient, as per Ext.P2 memo. Ext.P4 statutory notice was sent and

Crl.R.P No.979 of 2005 3 though the revision petitioner accepted the same, as seen from Ext.P5 acknowledgement card, no reply was sent and the amount was not returned. Hence the complaint.

3. On appearance of the revision petitioner before the trial court, particulars of offence was read over and explained, to which he pleaded not guilty. Thereupon, PW1 was examined and Exts.P1 to P5 were marked from the side of the 1st

respondent/complainant to prove his case. On closure of complainants evidence, the revision petitioner was questioned under Section 313 of Cr.P.C. He denied all the incriminating circumstances brought on record, but no defence evidence was adduced.

4. On analysing the facts and evidence and on hearing the

rival contentions from either side, the trial court found the revision petitioner guilty under Section 138 of the NI Act and he was convicted and sentenced to undergo simple imprisonment for two months and to pay compensation of Rs.30,000/- under Section 357(3) of Cr.P.C.

5. Aggrieved by the conviction and sentence, the revision CrI.R.P No.979 of 2005
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petitioner preferred CrI. Appeal No.203 of 2004, and the appellate court on re-appraisal of the facts and evidence, partly allowed the appeal by upholding the conviction under Section 138 of the NI Act, but modifying the sentence by reducing the substantive sentence into imprisonment till rising of court, and the compensation amount was enhanced to the cheque amount, i.e., Rs.75,000/-, with a default sentence of simple imprisonment for four months. Challenging that judgment, this revision has been preferred by him.

6. Now this Court is called upon to verify the legality, propriety and correctness of the conviction and sentence imposed on the revision petitioner by the appellate court.

7. Though notice was served on the 1st respondent, he opted to remain absent and none appeared for him.

8. Heard learned counsel for the revision petitioner. The

revision petitioner is assailing the judgment on the ground that there was no transaction at all between himself and the 1st respondent/complainant, and he was a total stranger to him. According to him, his father had availed a loan of Rs.13,000/- CrI.R.P No.979 of 2005 5

from Kundamkuzhy Finance, and as a security for that loan transaction, he had given his blank cheque as a security. Though the loan transaction was closed, the cheque was not returned. His case is that the cheque given to Kundamkuzhy Finance might have been misused by the 1st respondent/complainant, to file a false complaint against him.

9. It is pertinent to note that though the revision petitioner

accepted Ext.P4 statutory notice sent by the 1st respondent/ complainant, no reply was sent by him. If he has got a case that the 1st respondent/complainant was a total stranger to him, and there was no transaction at all between them, immediately on receipt of the notice, he should have sent a reply, stating the circumstance under which his cheque might have reached the hands of the complainant. The fact that the disputed cheque was the security cheque given by him to Kundamkuzhy Finance for the loan availed by his father, should have been informed to the 1st respondent/complainant, immediately on receipt of the notice, if it was a genuine contention. But that was not done.

10. Though the revision petitioner contended that his father Crl.R.P No.979 of 2005 6

had availed a loan of Rs.13,000/- from Kundamkuzhy Finance, as a security for which he had given his cheque, no scrap of paper has been produced to show that, his father had availed any such loan from Kundamkuzhy Finance. There is nothing to show that as a security to the loan availed by his father, his blank cheque was received by that financial institution. So, the mere statement that his cheque was given as security to Kundamkuzhy Finance, in the loan transaction of his father, is liable to be rejected, as it is not supported by any documents.

11. The revision petitioner is not disputing his signature in

Ext.P1 cheque. The testimony of PW1 clearly shows that towards discharge of Rs.75,000/- borrowed by the revision petitioner, he issued Ext.P1 cheque. The revision petitioner did not succeed in impeaching the testimony of PW1. Moreover, the presumption under Sections 118 and 139 of the NI Act also come to the aid of

the 1st respondent/complainant.

12. When the complainant discharged the initial burden to prove the transaction which led to the execution of the cheque, the presumptions under Sections 118 and 139 of the NI Act CrI.R.P No.979 of 2005 7

would come into play. These presumptions are rebuttable and it is the duty of the accused to rebut the presumptions, and the standard of proof of rebuttal is preponderance of probabilities. It has been settled law, that the accused can either adduce independent evidence or rely on the evidence tendered by the complainant to rebut the presumptions. (See Rangappa v. Mohan [2010 (2) KLT 682 (SC)], Bir Singh v. Mukesh Kumar [2019 (1) KLT 598 (SC)] & Kalamani Tex (M/s.) and Another v. P.Balasubramanian [2021 (1) KLT OnLine

1132 (SC)]). But no independent evidence has been adduced by the revision petitioner to rebut the presumptions, and the evidence tendered by the complainant/1st respondent also was not sufficient to rebut the presumptions.

13. The trial court as well as the appellate court, on

analysing the facts and evidence, rightly came to the conclusion

that the revision petitioner committed an offence punishable under Section 138 of the NI Act, and this Court finds no illegality or impropriety in that finding. The trial court sentenced the revision petitioner to undergo simple imprisonment for two CrI.R.P No.979 of 2005 8

months and to pay compensation of Rs.30,000/-. The appellate court took a lenient view to avoid jail sentence for the revision petitioner, stating that his inability to pay the amount might have led to the prosecution. So instead of simple imprisonment for two months, the appellate court imposed imprisonment till rising of court and directed him to pay compensation of Rs.75,000/-, i.e., the cheque amount, and in default, he was directed to undergo simple imprisonment for four months. This Court finds no reason to interfere with the sentence imposed by the appellate court, as maximum leniency possible has already been shown by the appellate court towards the revision petitioner.

14. In the result, the revision petition is dismissed, upholding the conviction and sentence imposed on the revision petitioner by the appellate court, as per the impugned judgment. The revision petitioner is directed to surrender before the

trial court on or before 15.01.2024 to receive the sentence and to pay the compensation amount to the complainant. In default, the trial court is directed to issue arrest warrant against the revision petitioner to execute the sentence. If the Crl.R.P No.979 of 2005 9

complainant/1st respondent remains absent to receive the compensation amount, the revision petitioner has to deposit that amount before the trial court, and thereafter the trial court has to issue notice to the complainant to receive the amount. Registry is directed to transmit the case records to the trial court forthwith, for facilitating execution of the sentence without delay.

Sd/- SOPHY THOMAS, JUDGE DSV/-

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