

Shajahan Vs. Aboobaker

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Court : Kerala

Decided On : Nov-27-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Shajahan

Respondent : Aboobaker

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN THURSDAY, THE 27TH DAY OF NOVEMBER 2014 6TH AGRAHAYANA, 1936 CrI.Rev.Pet.No. 1993 of 2014 ()
----- AGAINST THE

JUDGMENT

IN CRA.NO.694/2010 of II ADDL.SESIONS JUDGE, THIRUVANANTHAPURAM DATED 27-08-2014 AGAINST THE

JUDGMENT

IN ST.NO.752/2008 of JUDICIAL FIRST CLASS MAGISTRATE COURT - III, NEDUMANGAD DATED 17-08-2010 REVISION
PETITIONER(S)/APPELLANT/ACCUSED:

----- SHAJAHAN S/O PAREEDU KUNJU, 'KINNARAM', MUTHIYAVILA, NEAR GOVT.SCHOOL, KATTAKKADA P.O. THIRUVANANTHAPURAM BY ADVS.SRI.T.A.UNNIKRISHNAN

4. When the revision petitioner appeared before the court below, the particulars of offences were read over and explained to him and he pleaded not guilty. In order to prove the case of the complainant, the complainant himself was examined as PW1 and one witness was examined as PW2 and Exts.P1 to P6 were marked on his side. After closure of the complainant's evidence, the revision petitioner was questioned under Section 313 of Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the complainant's evidence. He had further stated that he had borrowed an amount of Rs.10,000/- from the son of the complainant and issued a blank cheque which was misused and the present complaint was filed. In order to prove this case, DW1 to 3 were examined and Exts.D1 and X1 were marked.

5. After considering the evidence on record, the court below disbelieved the case of the revision petitioner and believed the evidence of PW1 and found the revision petitioner guilty under Section 138 of the Act and convicted him thereunder and sentenced him to undergo simple imprisonment for four months and also to pay the cheque Crl.R.P.No. 1993 of 2014 :

3. : amount of Rs.40,000/- as compensation to the complainant in default to undergo simple imprisonment for two months more. Aggrieved by the same, he filed Crl.Appeal.No.694/2010 before the Sessions Court, Thiruvananthapuram which was made over to Second Additional Sessions Court, Thiruvananthapuram for disposal and the learned Additional Sessions Judge had allowed the appeal in part confirming the order of conviction, but, converted the compensation to fine with default sentence and reduced the substantive sentence to imprisonment till rising of court and directed the fine to be paid to the complainant as compensation. Aggrieved by the same, the present revision has been filed by the revision petitioner - accused before the court below.

6. Considering the scope of enquiry and nature of evidence adduced and the contentions raised, this court felt that the revision can be and disposed of at the admission stage itself after hearing the Counsel for the revision petitioner and the learned Public Prosecutor appearing for the second respondent dispensing with notice to the first respondent.

7. The Counsel for the revision petitioner submitted that the evidence of DWs 1 to 3 and Ext.D1 coupled with the CrI.R.P.No. 1993 of 2014 :

4. : evidence of PW1 will go to show that the case of the revision petitioner is more probable than the case of the complainant and he had rebutted the presumption and courts below have not properly appreciated the evidence and he is entitled to get acquittal.

8. On the other hand, the learned Public Prosecutor submitted that courts below have properly appreciated the evidence and rightly concluded that the revision petitioner had committed the offence and the concurrent findings of the court below on this aspect do not call for any interference.

9. The case of the complainant in the complaint was that revision petitioner borrowed a sum of Rs.40,000/- and in discharge of that liability, he had issued Ext.P1 cheque. But, the case of the revision petitioner was that he had no transaction with the complainant, but, he had borrowed Rs.10,000/- from DW2 - the complainant's son and at that time, the present cheque was given as blank signed cheque as security which was misused and the present complaint was filed. In order to prove the case of the complainant, the complainant himself was examined as PW1 and he deposed in support of his case in the complaint. Though he was cross CrI.R.P.No. 1993 of 2014 :

5. : examined at length, nothing was brought out to discredit his evidence regarding this aspect. In order to prove the case of the revision petitioner, one witness was examined as DW1 and the son of the complainant was examined as DW2 and revision petitioner himself was examined as DW3 and he produced Ext.D1. DW2 had denied the transaction. Even assuming that the case of the revision petitioner is believable that he had got some money transaction with the son of the complainant, Ext.D1 does not show anything about issuance of any cheque. Further, the evidence of DW1 is not believable as he claims, that without his knowledge, no monetary transaction had taken place between accused and any other person. He even remembers the cheque number which is improbable. So, court below was perfectly justified in coming to the conclusion that the evidence of DW1 is not believable. Further, the evidence of DW3 is also not

believable that the blank signed cheque given to the complainant's son was misused. He had not sent any reply to Ext.P4 notice. He did not take any action against the son of the complainant for misusing his cheque as well. So, under the circumstances, the courts below were perfectly justified in coming to the conclusion that the case of the Crl.R.P.No. 1993 of 2014 :

6. : revision petitioner is not believable or probable and rightly believed the evidence of PW1 and came to the conclusion that the revision petitioner had issued Ext.P1 cheque in discharge of his liability and he did not pay the amount in spite of receiving notice intimating the dishonour and demanding payment and thereby, he had committed the offence punishable under Section 138 of the Act and the concurrent findings of the court below on this aspect on facts do not call for any interference.

10. As regards the sentence is concerned, the trial court had sentenced him to undergo simple imprisonment for four months and also to pay a compensation of Rs.40,000/- to the complainant in default to undergo simple imprisonment for two months more under Section 357(3) of Criminal Procedure. But, the appellate court relying on the decision reported in Somnath Sarkar Vs. Utpal Basu Mallick [2013(4) KLT350(SC)] and also the decision reported in Damodar S. Prabhu Vs. Sayed Babalal H. [JT2010(4) SC457, converted the compensation to fine with default sentence of two months simple imprisonment and directed to pay the fine amount if realised as compensation to the complainant under Section 357(1)(b) of Code of Criminal Procedure and also Crl.R.P.No. 1993 of 2014 :

7. : reduced the substantive sentence to imprisonment till rising of court. So, maximum leniency has been shown by the court below in passing the sentence as well. So, it cannot be said to be excessive which warrants interference at the hands of this court.

11. While this court was about to dispose of the case, the Counsel for the revision petitioner sought six months time to pay the amount. But, considering the amount and also considering the fact that the case is of the year 2008, the time sought for appears to be on the higher side. However some time can be granted to the revision petitioner to pay the amount. So, the revision petitioner is granted time till

31.03.2015 to pay the amount. Till then, the execution of sentence is directed to be kept in abeyance. With the above direction and observation, the revision petition is dismissed. Office is directed to communicate this order to the concerned court immediately. Sd/- K.Ramakrishnan, Judge. Bb [True copy] P.A to Judge

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