

M.A. Issac Vs. State of Kerala

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Court : Kerala

Decided On : Dec-17-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : M.A. Issac

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN WEDNESDAY, THE 17TH DAY OF DECEMBER 2014 26TH AGRAHAYANA, 1936 CrI.Rev.Pet.No. 2172 of 2014 ()
----- AGAINST THE

JUDGMENT

IN CRA.NO.104/2010 of COURT OF SESSIONS JUDGE, WAYANAD, KALPETTA DATED 07-10-2011 AGAINST THE

JUDGMENT

IN S.T.NO.1997/2008 of JUDICIAL FIRST CLASS MAGISTRATE COURT - I, SULTHAN BATHERY DATED 28-04-2010 REVISION PETITIONER(S)/REVISION PETITIONER/ APPELLANT/ACCUSED:

M.A. ISSAC, AGED 58 YEARS S/O AVARACHAN, MOTHAL HOUSE, CHULLIOD P.O., SULTHAN BATHERY BY ADVS.SRI.C.A.CHACKO SMT.C.M.CHARISMA

RESPONDENT(S)/RESPONDENTS/ STATE & COMPLAINANT :
----- 1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA,
ERNAKULAM2 T.P.RAVEENDRAN, S/O KANNAN NAIR, "USHAS", FAIRLAND
COLONY SULTHAN BATHERY R1 BY PUBLIC PROSECUTOR SRI.N.SURESH
THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON1712-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
Bb K. Ramakrishnan, J.

===== Crl.R.P.No.2172 of 2014
===== Dated this, the 17th day of December,
2014.

ORDER

Accused in S.T.No.1997/2008 on the file of the Judicial First Class Magistrate Court, No-I, Sulthan Bathery is the revision petitioner herein.

2. The case was taken on file on the basis of a private complaint filed by the second respondent herein against the revision petitioner alleging offence under Section 138 of the Negotiable Instruments Act (hereinafter called 'the Act').

3. The case of the complainant in the complaint was that the revision petitioner borrowed a sum of of Rs.2,00,000/- in connection with his daughter's marriage and in discharge of that liability, he had issued Ext.P1 cheque which when presented was dishonoured for the reason 'funds insufficient' evidenced by Ext.P3 dishonour memo and it was intimated to the complainant by Ext.P2 intimation letter. The complainant issued Ext.P4 notice and the same was received by the revision petitioner evidenced by Ext.P5 postal acknowledgment and he sent Ext.P6 reply containing false allegations. He had not paid the amount. So, he had committed the offence punishable Crl.R.P.No.2172 of 2014 :

2. : under Section 138 of the Act. Hence the complaint.

4. When the revision petitioner appeared before the court below, the particulars of offence 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 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 the cheque somehow obtained from the possession of the revision petitioner was misused and the present complaint was filed. No evidence was adduced on his side in defence.

5. After considering the evidence on record, the court below found the revision petitioner guilty under Section 138 of the Act and convicted him thereunder and sentenced him to undergo simple imprisonment for three months and also to pay Rs.2,10,000/- as compensation to the complainant in default to undergo simple imprisonment for one month under Section 357(3) of Code of Criminal Procedure. This was challenged by Crl.R.P.No.2172 of 2014 :

3. : the revision petitioner by filing Crl.Appeal.No.104/2010 before the Sessions Court, Kalpetta and the learned Additional Sessions Judge dismissed the appeal confirming the order of conviction and sentence passed by the court below. 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 the nature of contentions raised, this court felt that the revision can be disposed of at the admission stage itself after hearing the Counsel for the revision petitioner and the Public Prosecutor appearing for the first respondent dispensing with notice to the second respondent.

7. The Counsel for the revision petitioner submitted that the courts below have not properly appreciated the evidence and the sentence imposed is harsh.

8. The concurrent findings of the court below were supported by the learned Public Prosecutor.

9. The case of the complainant in the complaint was that revision petitioner borrowed a sum of Rs.2,00,000/- and in discharge of that liability, he had issued Ext.P1 cheque. The case of the revision petitioner was one of total denial. The

Crl.R.P.No.2172 of 2014 :

4. : complainant himself was examined as PW1 and he deposed in support of his case in the complaint. Though he was cross examined at length, nothing was brought out to discredit his evidence on this aspect. Except sending a reply and giving suggestions to PW1 that the cheque somehow obtained was misused, the revision petitioner had not taken any steps to prove his defence. He did not give any stop memo to the bank when he came to know about the missing of the cheque. He did not adduce any evidence nor had he taken any action against the complainant for misusing the cheque as well. He did not take any step to send the cheque for expert opinion to prove the writing or signature in the cheque were not his. So, under the circumstances, the courts below were perfectly justified in coming to the conclusion that the case of the revision petitioner cannot be believed and rightly convicted him for the offence under Section 138 of the Negotiable Instruments Act relying on the evidence of PW1 and the statutory presumption under Sections 139 and 118 of the Act and the concurrent findings of the court below on fact do not call for any interference.

10. As regards the sentence is concerned, the trial court Crl.R.P.No.2172 of 2014 :

5. : has sentenced him to undergo simple imprisonment for three months and also to pay Rs.2,10,000/- as compensation to the complainant in default to undergo simple imprisonment for one month and the appellate court had confirmed the same.

11. In the decision reported in Damodar S. Prabhu Vs. Sayed Babalal H. [JT2010(4) SC457, the Hon'ble Supreme Court has held that the offences under Section 138 of the Act are purely civil nature, but, a criminal colour has been given subsequently by incorporating the same under the Negotiable Instruments Act. As far as possible, once the conviction is entered, compensation has to be provided so as to equip the loss sustained by the payee of the cheque. The same view has been reiterated in the decision reported in Kaushalya Devi Massand Vs. Roopkishore [AIR 2011 SC2566. So, having awarded more than the cheque amount as compensation, the substantive sentence of three months simple imprisonment imposed by the court below appears to be excessive and the same

can be set aside reducing the same to imprisonment till rising of court and giving the same as default sentence will be sufficient and that will meet the ends of justice. So, the sentence is modified as follows: Crl.R.P.No.2172 of 2014 :

6. : The revision petitioner is sentenced to undergo simple imprisonment till rising of court and also to pay Rs.2,10,000/- as compensation to the complainant in default to undergo simple imprisonment for four months under Section 357(3) of Code of Criminal Procedure.

12. The Counsel for the revision petitioner sought ten months time for payment of the amount. Considering the amount involved and also considering the fact that the case is of the year 2008, the period sought for appears to be on the higher side. So, six months time is granted to the revision petitioner to pay the amount. The revision petitioner is granted time till 17.06.2015 to pay the amount. Till then, the execution of sentence is directed to be kept in abeyance. With the above modification of the sentence alone, the revision petition is allowed in part and disposed of accordingly. 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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