

M.K.Komalakumar vs State

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Court : Kerala

Decided On : Jun-30-2020

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : CRL.A/587/2005

Appellant : M.K.Komalakumar

Respondent : STATE

Judgement :

CRL.A.No.587 OF 2005 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
TUESDAY, THE 30TH DAY OF JUNE 2020 / 9TH ASHADHA, 1942
CRL.A.No.587 OF 2005 AGAINST THE JUDGMENT IN CRL.A
NO.812/2002 DATED 26-03-2004 OF II ADDITIONAL SESSIONS
JUDGE, ERNAKULAM APPELLANT/COMPLAINANT: M.K.KOMALA
KUMAR PARAYIL HOUSE, THAIKKATTUKARA, ALUVA. BY ADVS.
SRI.M.N.SANJITH SRI.JAISON JOSEPH RESPONDENTS/STATE &
ACCUSED: 1 STATE REP. BY PUBLIC PROSECUTOR, HIGH COURT
OF KERALA. 2 C.S.SHEEBA W/O.SASIDHARAN, VELIPARAMBIL
HOUSE, PYARI JUNCTION, KOCHI-5. R1 BY SR. PUBLIC

PROSECUTOR SRI.B.JAYASURYA R2 BY ADV. SMT.M.S.LETHA R2
BY ADV. SRI.K.R.VINOD THIS CRIMINAL APPEAL HAVING BEEN
FINALLY HEARD ON 30.06.2020, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING: CRL.A.No.587 OF 2005 2

JUDGMENT

Dated this the 30th day of June 2020

The above appeal is filed by the complainant in C.C.No.1830/1999 on the file of the Additional Chief Judicial Magistrate, Economic Offences, Ernakulam. The 2 nd respondent herein is the accused in the above case. (Hereinafter the parties are mentioned in accordance with their rank before the trial court). It was a prosecution under Section 138 of the Negotiable Instruments Act (for short 'the N.I Act'). The trial court, after going through the evidence and the documents, convicted the accused under Section 138 of the N.I Act. But the appellate court reversed the finding and acquitted the accused.

2. When this matter came up on 23.6.2020, the learned

counsel for the appellant submitted that he had information that the 2nd respondent is no more. Therefore he wants to get instruction. Hence, the case was posted today. Today, the counsel submitted that he did not obtain any instruction from his client. Since the learned counsel for the appellant and the learned counsel for the 2nd is present, and it is an appeal pending from 2005 onwards, I decided to hear this case on merit.

3. Heard. CRL.A.No.587 OF 2005 3

4. The case of the complainant is that Advocate Mr.

Sivarajan residing at Kadavanthara is a common friend of the accused as well as her husband. As the accused's husband was financially in a bad

situation, Advocate Sivarajan requested the complainant to help the accused and her husband by giving some loans for their business purpose. The complainant obliged. The accused used to receive loan from the complainant, and in partial discharge of the debt, the accused issued a cheque of Rs.1,00,000/- on 30.04.1997 to the complainant. When the complainant presented the cheque, the same was returned with an endorsement 'funds insufficient'. When the statutory notice was issued, the accused refused to pay the amount. Hence the complaint was filed.

5. To substantiate the above case, two witnesses were examined on the side of the prosecution as PW1 and PW2. Exhibit P1 to P7 are marked on the side of the prosecution. The accused herself was examined as DW1.

6. After going through the evidence and documents, the

trial court found that, the accused committed an offence under Section 138 of the N.I Act. She was sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.1,30,000/-. In default of payment of fine, the accused is directed to undergo CRL.A.No.587 OF 2005 4

simple imprisonment for a further period of four months. There is an order to pay an amount of Rs.1,25,000/- to the complainant as compensation under Section 357(1) of the Cr.PC. Aggrieved by the conviction and sentence, the accused filed an appeal before the Sessions Court, Ernakulam. The II Additional Sessions Judge considered the appeal and allowed the appeal setting aside the conviction and sentence imposed by the trial court. Hence, this appeal.

7. The point for consideration in this appeal is whether the accused committed the offence as alleged by the prosecution.

8. The complainant's case is that the accused and her

husband known to Advocate Sivarajan, and they are friends of Advocate Sivarajan. They requested Advocate Sivarajan to arrange a loan to them. The complainant is also a friend of Advocate Sivarajan. Advocate Sivarajan asked the complainant to give a loan to the accused and her husband for their business purpose. Accordingly, an amount of Rs.1,00,000/- was given to the accused. The accused issued a cheque in discharge of the debt. When the cheque was presented, it was dishonoured. No payment was made even after statutory notice. This is the case of the complainant.

9. The case of the accused is that the husband of the CRL.A.No.587 OF 2005 5

accused borrowed an amount from Advocate Sivarajan with an undertaking to repay the amount with interest. He had given blank signed cheques as security towards the transaction. Advocate Sivarajan came to the house of the husband of the accused and quarreled with her husband in respect of the interest. Advocate Sivarajan demanded a signed blank cheque of the accused. The accused entrusted a blank signed cheque to her husband while she went to her house connected with her delivery. When Advocate Sivarajan quarreled with the husband of the accused, he entrusted the blank signed cheque of the accused to Advocate Sivarajan. One of the above cheques was used for instituting the present complaint. The appellate court, after considering the evidence in detail, found that the case of the accused is more probable. As per the deposition of PW1 and PW2, the complainant has given Rs.2 lakhs to the accused. But it is not mentioned in the complaint that the accused borrowed Rs.2 lakhs. The complainant has no case that more than Rs.1,00,000/- is due to him from the accused. Admittedly, Ext.P1 cheque was a blank signed cheque. Cheque was filled up by the complainant putting a date 30.04.1997. The evidence of PW1 shows that, the blank signed cheque was given by the accused on 30.04.1997 at the office of Advocate Sivarajan. After analyzing the entire

evidence, the appellate court concluded like this: 15. When the cheque was dishonoured the matter was intimated to Adv. Sivarajan. Adv. Sivarajan directed the complainant to file a case. The case of PW1 and PW2 is that, the accused and her husband was known to Adv. Sivarajan for more than last 12 years. The husband of the accused/appellant was a friend of Adv. Sivarajan. He had appeared for the husband of the accused in cheque cases also. If he was aware that the husband of the accused is not able to pay the amount mentioned in the cheque he may not have arranged loans for such a person. He was mediator for the arrangement of the loan. When the complainant intimated the matter to the mediator, the mediator will request the accused to pay the amount. Instead of calling for the accused to repay the amount he directed the complainant to institute the complaint. All these facts show that the case putforth by the complainant is not a genuine case. The cheque was not issued in discharge of any legally enforceable debt or liability. Hence, the accused is entitled to get an acquittal finding the accused not guilty of the offence alleged against her. Hence the judgment of the court below is liable to be set aside.

10. I perused the entire evidence and documents in this

case, along with the judgment of the trial court and the judgment

of the appellate court. I think the appellate court considered all CRL.A.No.587 OF 2005 7

the aspects and gave the benefit of the doubt to the accused. It is a finding of fact by the court after carefully scrutinising the evidence of the witness. Hence I think, there is nothing to interfere with the findings of the appellate court in an appeal against an acquittal in the facts and circumstances of this case. Hence, this Crl.Appeal is dismissed

confirming the

judgment dated 26.03.2004 in Crl.Appeal No.812 of 2002 of the II

Additional Sessions Judge, Ernakulam. Sd/- P.V.KUNHIKRISHNAN JUDGE
ab/pkk

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