

M.Abdul Rub vs Vairavan

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Court : Kerala

Decided On : Jul-21-2020

Judge : Honourable Mr.Justice T.V.Anilkumar

Appeal No. : CRL.A/1147/2005

Appellant : M.Abdul Rub

Respondent : Vairavan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR
TUESDAY, THE 21ST DAY OF JULY 2020 / 30TH ASHADHA, 1942
CRL.A.No.1147 OF 2005 AGAINST THE ORDER/JUDGMENT IN CRMC
1716/2003 DATED 25-02-2003 OF HIGH COURT OF KERALA
AGAINST THE ORDER/JUDGMENT IN CC 45/2000 DATED 20-05-2002
OF JUDICIAL MAGISTRATE OF FIRST CLASS -II,ATTINGAL
APPELLANT/COMPLAINANT: M.ABDUL RUB, A.R.AUDITORIUM AND
SHOPPING COMPLEX, VENJARAMOODU (FROM RIYAS, MANZIL,
KULAMUTTOM, MANAMPOOR VILLAGE,, THIRUVANANTHAPURAM
DISTRICT-DIED DURING TRIAL, AND SUBSTITUTED BY HIS SON
RIYAS OF DO. DO. BY ADV. SRI.M.R.RAJESH

RESPONDENTS/STATE AND ACCUSED: 1 VAIRAVAN, PLAMOOTTIL VEEDU, KAVALAYOOR, MANAMPOOR VILLAGE,, THIRUVANANTHAPURAM DISTRICT. 2 STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,, ERNAKULAM. R1-2 BY ADV. PUBLIC PROSECUTOR R1 BY ADV. SRI. THIRUMALA P.K.MANI OTHER PRESENT: SRI E C BINEESH -PP THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21.07.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: CRL.A.No.1147 OF 2005 2

JUDGMENT

The appellant is the complainant in C.C.No.45

of 2000 before JFCM Court-II, Attingal.

judgment dated 20.5.2002 and being aggrieved, this

appeal challenging acquittal is filed by the complainant.

2. The appellant is a business man. The allegation against the accused is that he borrowed an amount of Rs.1,50,000/- on 2.1.1999 and issued Ext.P2 cheque dated 2.5.1999 in appellant's name

for the amount, drawn on Indian Overseas Bank, Mananakku branch. When the cheque was dishonoured on presentment for want of sufficient funds, demand notice was issued to the accused and since he did not send any reply even after acceptance, he was prosecuted before the trial court for offence punishable u/s.138 of the NI Act. CRL.A.No.1147 OF 2005 3

3. The accused admitted borrowal of Rs.1,50,000/- from the appellant and claimed that

the entire amount borrowed was repaid

transaction, in fact, took place as early as in

1997. So also the cheque issued was blank without having any entries as to the date or amount been made therein. The complainant who was bound to return the blank cheque made use of it, with false

entries as to the date and amount and filed complaint. In short, the contention is that Ext.P2 cheque was subjected to material alteration and it was not therefore legally enforceable nor capable of being a subject matter of prosecution u/s.138 of NI Act.

4. In support of the defence contention, the accused got himself examined as DW1. He examined DW2, a witness to prove discharge of liability. He also examined PW2, manager of Indian Overseas Bank CRL.A.No.1147 OF 2005 4 to prove that Ext.P2 cheque leaf was issued from a cheque book supplied to the drawer in the year 1997.

5. On the side of the complainant, his son was examined as PW1. During the pendency of the case, the complainant had expired and therefore, PW1 was brought on record to prosecute the proceeding. PW3 was cited as an independent witness to prove the loan transaction.

6. The trial court was not prepared to believe the case of the complainant that transaction was in the year 1999 though the borrowal of Rs.1,50,000/- was admitted by the accused. Accepting the defence case, the impugned judgment of acquittal was passed.

7. The contention of the appellant is that the

trial court failed to read the evidence in its proper perspective. The trial court failed to appreciate the contention of the appellant that Ext D2 receipt was not genuine and erroneously gave CRL.A.No.1147 OF 2005 5 undue importance to the evidence tendered by DW2. It was also submitted that the testimony given by independent witness, PW3 was not considered by the trial court at all. In short, the argument is that the legal presumption attached to Ext.P2 cheque was not rebutted by the accused.

8. On the other hand, the learned counsel for

the first respondent, accused submitted that the impugned order was passed in accordance with the evidence and principles of law and in the absence of the judgment being shown to be perverse, this court may not be justified in interfering with the same.

9. I heard the learned lawyers appearing on both sides.

10. The signature in Ext.P2 is admitted by the accused. He also admits that he borrowed an amount of Rs.1,50,000/-. His contention is that the entire liability was discharged and on the date of presentation of Ext.P2 cheque, there was no legally

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6enforceable

opinion, Ext.P2 cheque cannot enjoy the presumption of consideration regardless of the denial of the genuineness of the alleged transaction in the year of 1999. Having regard to the facts proved in the case, the initial burden is upon the appellant to prove that the transaction was in the year 1999 and issue of Ext.P2 cheque was in discharge of the liability which was incurred as on 2.1.1999.

11. The original complainant is no more and his

son, PW1 was examined as witness

testimony of PW3, an independent witness also. On consideration of their testimonies, the evidence tendered by them does not appear to be convincing.

Ext.D2 receipt dated 13.2.1998

repaid by the accused as on 13.2.1998. The trial

court believed the testimony of

that he personally went to appellant's father and

paid the amount. Of course, as

convincing.

12. In my opinion, the accused need not have to

prove discharge of entire liability since the evidence tendered by DW1 and DW2 is sufficient to establish that, Ext.P2 cheque was presented for encashment of an amount larger than what the drawer was actually liable for, as on the date of presentation. Ext.D2 belies the case of the complainant that the transaction was in the year CRL.A.No.1147 OF 2005 8

1999. The testimony of PW2 branch manager of Indian Overseas Bank also shows that Ext.P2 cheque leaf was delivered from a cheque book which was issued to the drawer in the year 1997. The totality of these items of evidence shows that Ext.P2 was

issued in blank form without any date or the amount. Agreeing with the trial court, I am fully satisfied that Ext.P2 blank cheque was manipulated and subjected to material alteration. When, as a matter of fact, there was discharge of liability of Rs.1 lakh out of the total amount of Rs.1,50,000/- borrowed, it is clear that Ext.P2 cheque was manipulated with false entries as to the date and amount. A cheque which is proved to have been subjected to material alteration is unenforceable or void under law. Therefore, from these materials, I am satisfied, agreeing with the contention of the accused, that the legal presumption of consideration u/s.139 of NI Act stands clearly rebutted by the materials on record. The view taken CRL.A.No.1147 OF 2005 9 by the trial court acquitting the accused is therefore, fully in accordance with the evidence and law. The impugned order of acquittal therefore, does not call for any interference in this appeal. In the result, this CrI. Appeal is dismissed confirming the impugned judgment of acquittal of first respondent. Sd/- T.V.ANILKUMAR, JUDGE pm

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