

T.Narayanan Vs. State of Kerala

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Court : Kerala

Decided On : Dec-17-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : T.Narayanan

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 Crl.Rev.Pet.No. 2179 of 2014 ()
----- AGAINST THE

JUDGMENT

IN CRL.A442012 of SESSIONS COURT, KASARAGOD DATED 2012-2013
AGAINST THE

JUDGMENT

IN CC1072011 of J.M.F.C.-II, KASARAGOD DATED 0702-2012 REVISION
PETITIONER/APPELLANT/ACCUSED: -----
T.NARAYANAN, S/O.LATE PAKEERA, R/AT T.K.HOUSE, NELLIYADUKAM,
PANAYAL.P.O, VIA PALLIKERE, KASARAGOD DISTRICT. BY ADV.
SMT.R.PADMAKUMARI RESPONDENTS/RESPONDENTS/STATE &
COMPLAINANT: ----- 1. STATE OF KERALA

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

2. HARICHANDRAN, AGED 66 YEARS, S/O. RAMAKRISHNA.B, R/NEAR CATHOLIC CHURCH, T.B.ROAD, HOSDURG, NOW RESIDING AT VAISHALI, NEAR BUS STAND NULLYPADY, KASARAGOD. R2 BY ADV. SRI.M.SASINDRAN R1 BY PUBLIC PROSECUTOR SRI.N. SURESH THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17-12-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K. RAMAKRISHNAN, J.

..... CrI.R.P.No.2179 of 2014
..... Dated this the 17th day of December, 2014.

ORDER

The accused in C.C.No.107/2011 on the file of the Judicial First Class Magistrate Court-II, Kasaragod is the revision petitioner herein. The case was taken on file on the basis of a private complaint filed by the second respondent/complainant, against the revision petitioner alleging commission of the offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act').

2. The case of the complainant in the complaint was that the revision petitioner borrowed a sum of Rs. Three lakhs and in discharge of that liability, he had issued Ext.P1 cheque which when presented was dishonoured for the reason funds insufficient vide Ext.P2 dishonour memo. This was intimated to the complainant by Ext.P3 intimation letter. The complainant issued Ext.P5 notice vide Ext.P6 postal receipt and the same was returned with the endorsement refused evidenced by Ext.P4 returned notice. But he had not paid the amount. So he had committed the offence punishable under Section 138 of the CrI.R.P.No.2179 of 2014 2 Act. Hence the complaint.

3. When the revision petitioner appeared before the court below, 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 the Code and he denied all the incriminating circumstances brought against him in the complainant's evidence. He had further stated that one Balakrishnan, who is a neighbour of the revision petitioner approached him for a loan and he along with the said Balakrishnan went to the complainant and Balakrishnan borrowed a sum of Rs. 1,50,000/- in connection with his daughter's marriage. Thereafter he died and so the complainant came along with some unruly elements and took away his cheque and by misusing the same, the present complaint was filed.

4. No evidence was adduced on his side in defence. After considering the evidence on record, the court below found the revision petitioner guilty under Section 138 of the Act, Crl.R.P.No.2179 of 2014 3 convicted him thereunder and sentenced him to undergo simple imprisonment for one month and also to pay the cheque amount of Rs. Three lakhs as compensation to the complainant and in default to undergo simple imprisonment for four months under Section 357 (3) of the Code. Aggrieved by the same, the revision petitioner filed Crl.A.No.44/2012 before the Sessions Court, Kasaragod and the learned Sessions Judge confirmed the order of conviction and direction to pay compensation but modified the substantive sentence to imprisonment till the rising of court and default sentence to five months. Aggrieved by the same, the present revision has been filed by the revision petitioner/accused before the court below.

5. Since the second respondent appeared through counsel and expressed his willingness to appear in the revision also, this Court felt that the revision can be admitted and disposed of on merit after hearing both sides. So the revision is admitted, heard and disposed of today itself.

6. The counsel for the revision petitioner submitted that the courts below had not properly understood the evidence and the defence taken by the revision petitioner which is more probable and he had rebutted the presumptions. Crl.R.P.No.2179 of 2014 4 7.. The counsel for the second respondent submitted that the courts below have found the allegations of the revision petitioner not acceptable and rightly convicted him for the offence alleged.

8. The learned Public Prosecutor also supported the case of the counsel for the second respondent.

9. The case of the complainant in the complaint was that the revision petitioner borrowed a sum of Rs. Three lakhs and in discharge of that liability, issued Ext.P1 cheque. The case of the revision petitioner is one of total denial. His case was that one Balakrishnan had approached him for some financial help and he along with the said Balakrishnan approached the complainant and Balakrishnan borrowed Rs.1,50,000/- from the complainant in connection with the marriage of his daughter, but later he died without paying the amount. So the complainant along with unruly elements came to the house, threatened and obtained Ext.P1 cheque and misusing the same the present complaint was filed. In order to prove the case of the complainant, the complainant himself was examined as PW1 and deposed in support of his case in the complaint. Nothing was brought out to discredit his evidence regarding CrI.R.P.No.2179 of 2014 5 the revision petitioner borrowing the amount and issuing the cheque. The suggestion given by the revision petitioner to PW1 regarding the fact that cheque was forcibly obtained was denied by him. He did not file any complaint against the action of the complainant forcibly obtaining the cheque as claimed by him. Notice sent was also returned with the endorsement refused. No independent evidence adduced to prove this fact as burden is on him to prove the vitiating circumstances in obtaining the cheque. He did not instruct the bank to stop payment of the cheque on this ground. All these things will go to show that he has nothing to say about the transaction and that was the reason he did not adduce evidence to prove his case. So under the circumstances, the courts below were perfectly justified in rejecting the contentions of the revision petitioner and accepting the evidence of PW1 and relying on the presumption available under section 139 of the Act rightly convicted him for the offence under section 138 of the Act and the concurrent findings of the court below do not call for any interference.

10. As regards the sentence is concerned, though the court below had sentenced him to undergo simple imprisonment CrI.R.P.No.2179 of 2014 6 for one month and also to pay cheque amount of Rs. Three lakhs as compensation, in default to undergo simple imprisonment for four months under Section 357 (3) of the code,

the substantive sentence was reduced to imprisonment till the rising of court and default sentence was enhanced to five months by the appellate court which cannot be said to be excessive. So maximum leniency has been shown by the appellate court in awarding the sentence also which does not require any interference at the hands of this Court.

11. While this Court was about to dispose of the case, the counsel for the revision petitioner prayed for six months time to pay the amount. The counsel for the revision petitioner also submitted that the revision petitioner is in jail now. Considering the pathetic condition, this Court feels that six months time can be granted to the revision petitioner to pay the amount. So the revision petitioner is granted time till 17.6.2014 to pay the amount. Till then execution of the sentence is directed to be kept in abeyance. Office is directed to communicate this order to the concerned court so as to release the revision petitioner from jail to enable him to pay the amount within the time granted CrI.R.P.No.2179 of 2014 7 by this Court. With the above directions and observations, this revision petition is dismissed. Sd/- K.RAMAKRISHNAN, JUDGE. cl /true copy/ P.S to Judge

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