

George Paul Vs. Ajithkumar B.

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Court : Kerala

Decided On : Dec-16-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : George Paul

Respondent : Ajithkumar B.

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN TUESDAY, THE 16TH DAY OF DECEMBER 2014 25TH AGRAHAYANA, 1936 CrI.Rev.Pet.No. 2166 of 2014 ()
----- AGAINST THE

JUDGMENT

IN CRL.A2322013 of ADDL.SESIONS COURT-I, KOTTAYAM DATED 03/09-2014
AGAINST THE

JUDGMENT

IN ST872012 of J.M.F.C.III, KANJIRAPPALLY DATED 20/06-2013 REVISION PETITIONER/APPELLANT/ACCUSED: ----- GEORGE PAUL, S/O.PAUL, NADACKAL HOUSE, PALLOM P.O., KOTTAYAM TALUK. BY ADV. SRI.SERGI JOSEPH THOMAS RESPONDENTS/COMPLAINANT/STATE: ----- 1. AJITHKUMAR B. S/O.BHASKARAN NAIR, GEETHA SADANAM HOUSE, ATTICKAL BHAGOM, VADAKKUMBHAGOM KARA

CHIRAKKADAVU VILLAGE, KOTTAYAM DISTRICT - 686 001.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM - 682 031. R2 BY PUBLIC PROSECUTOR SRI.N. SURESH THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 16-12-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K. RAMAKRISHNAN, J.

..... Crl.R.P.No.2166 of 2014
..... Dated this the 16th day of December, 2014.

ORDER

The accused in S.T.No.87/2002 on the file of the Judicial First Class Magistrate Court-III, Kanjirappally is the revision petitioner herein. The case was taken on file on the basis of a private complaint filed by the first respondent/complainant, against the revision petitioner alleging 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.50,000/- on 7.12.2010 agreeing to repay the same within three months and also issued Ext.P1 cheque with the same date requesting to represent the cheque after three months. Since the revision petitioner did not pay the amount, the cheque when presented was dishonoured for the reason funds insufficient vide Ext.P2 dishonour memo, which was intimated to the complainant by his banker vide Ext.P3 intimation letter. The complainant issued Ext.P5 notice to the revision petitioner vide Ext.P6 postal receipt intimating dishonour and demanding payment. But that was returned with the endorsement unclaimed after intimation evidenced by Crl.R.P.No.2166 of 2014 2 Ext.P4 returned notice. But the revision petitioner had not paid the amount. So he had committed the offence punishable under Section 138 of the Negotiable Instruments 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 there was an earlier transaction between the same parties, in respect of which, he filed ST.No.113/2009 and that was compromised. Since he did not pay the amount of Rs.5,000/- demanded by way of interest, the complainant had misused the cheque and filed the private complaint. He had not adduced any evidence. After considering the evidence on record, the trial court found the revision CrI.R.P.No.2166 of 2014 3 petitioner guilty under Section 138 of the Act, convicted him thereunder and sentenced him to undergo imprisonment till the rising of court and also to pay cheque amount of Rs.50,000/- as fine with 9% interest from 7.12.2010 till realisation, in default to undergo simple imprisonment for six months. It is further ordered that, if fine amount is realised, the same be paid to the complainant as compensation under Section 357(1)(b) of the Code (wrongly shown as Section 357(3) of the Code by the court below). Aggrieved by the same, the revision petitioner filed CrI.A.No.232/2013 before the Sessions Court, Kottayam which was made over to the Additional Sessions Court-I, Kottayam for disposal and the learned Additional Sessions Judge allowed the appeal in part confirming the order of conviction and sentence of imprisonment till the rising of court but quantified the fine as Rs.60,000/-, in default to undergo simple imprisonment for one month and directed the fine to be paid as compensation to the complainant. Aggrieved by the same, the present revision has been filed by the revision petitioner/accused before the court below. CrI.R.P.No.2166 of 2014 4 4. 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 learned Public Prosecutor appearing for the second respondent dispensing with notice to the first respondent.

5. The counsel for the revision petitioner submitted that the courts below have not considered the scope of defence in the right perspective and the courts below were not justified in convicting the revision petitioner and sentence imposed is excessive.

6. The learned Public Prosecutor supported the concurrent findings of the court below.

7. The case of the complainant in the complaint was that the revision petitioner borrowed a sum of Rs.50,000/- and in discharge of that liability, he had issued Ext.P1 cheque with date 7.12.2010 on the date of borrowal of the amount itself with a request to present the cheque after three months. The case of the revision petitioner was that there was another case between them as S.T.No.113/2009 Crl.R.P.No.2166 of 2014 5 and that was compromised and since he had not paid interest of Rs.5,000/- as agreed, the present complaint was filed. In order to prove the case of the complainant, the complainant himself was examined as PW1. He had 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 material aspects. Further, the case of the revision petitioner was that the cheque given in the earlier case S.T.113/2009 was misused when he did not pay the amount as agreed between them when it was compromised is unbelievable. Further, he did not adduce any evidence to prove this fact as well. Notice issued was returned with the endorsement unclaimed in spite of intimation given. All these circumstances goes against the revision petitioner and in the absence of any evidence adduced on the side of the revision petitioner to rebut the presumption under section 139 of the Act, the courts below were perfectly justified in relying on the evidence of PW1 and convicting the revision petitioner for the offence under Section 138 of the Act and the concurrent findings of the court below on this aspect do not call for any Crl.R.P.No.2166 of 2014 6 interference.

8. As regards the sentence is concerned, the court below has sentenced the revision petitioner to undergo simple imprisonment till the rising of court and also to pay Rs.50,000/- together with interest at the rate of 9% from the date of cheque till realisation with default sentence of six months simple imprisonment and it is further ordered that if fine is realised, the same be given to the complainant as compensation under Section 357(1)(b) of the Code and the appellate court confirmed the substantive sentence but quantified the fine as Rs.60,000/- and reduced the default sentence to one month. So maximum leniency has been shown by the courts below in imposing sentence as well which cannot be said to

be excessive so as to warrant interference at the hands of this Court. The fine amount if realised, be paid to the complainant under section 357(1) (b) of the Code was also confirmed by the appellate court.

9. While this Court was about to dispose of the case, the counsel for the revision petitioner sought six months time for payment of the amount. Considering the fact that the CrI.R.P.No.2166 of 2014 7 case of the year 2012 and also considering the amount, it appears that the period asked for is little excessive and this Court feels that five months time can be granted. So the revision petitioner is granted time till 16.5.2015 to pay the amount. Till then, execution of the sentence is directed to be kept in abeyance. With the above directions and observations, this revision petition is dismissed. Office is directed to communicate this order to the concerned court at the earliest. Sd/- K. RAMAKRISHNAN, JUDGE. cl /true copy/ P.S to Judge CrI.R.P.No.2166 of 2014 8

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