

Abbas vs State of Kerala,

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Court : Kerala Orders

Decided On : Dec-09-2019

Judge : Honourable Mr. Justice R. Narayana Pisharadi

Appeal No. : Crl.Rev.Pet/1277/2019

Appellant : ABBAS

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI MONDAY, THE 09TH DAY OF DECEMBER 2019 / 18TH AGRAHAYANA, 1941 Crl.Rev.Pet.No.1277 OF 2019 AGAINST THE ORDER IN CRA 75/2016 OF ADDITIONAL DISTRICT & SESSIONS COURT, MOOVATTUPUZHA IN CC 392/2012 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II, MUVATTUPZHA PETITIONER/ACCUSED: ABBAS AGED 53 YEARS S/O. YOOSUF, PAINAYIL HOUSE, PERUMATTOM KARA, PUTHUPPADY P.O, MUVATTUPUZHA, MUVATTUPUZHA POLICE STATION 686 673. BY ADVS. KUM.SHAHINA HAMEED SRI.K.R.RAMESH SMT.B.SABITHA (DESOM) SRI.NEERAJ NARAYAN SRI.K.S.STEJO

RESPONDENTS/COMPLAINANT:

1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM 682 031. 2 MARY THOMAS, ARUVADIYIL HOUSE, PERUMATTOM, PUTHUPPADY P.O, MUVATTUPUZHA 686 673. R2 BY ADV. SRI.T.P.PRADEEP R2 BY ADV. SRI.S.SREEDEV R2 BY ADV. SRI.P.K.SATHEES KUMAR R2 BY ADV. SMT.NITHYA VIJAYAN R2 BY ADV. SMT.K.A.MINI KUMARI R2 BY ADV. SHRI.SATHEESH CHANDRA SRI C K PRASAD-PP THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON

05-12-2019, THE COURT ON 09-12-2019 PASSED THE FOLLOWING:
R.NARAYANA PISHARADI, J ***** CrI.R.P.No.1277 of
2019 ----- Dated this the 9th day of
December, 2019

ORDER

The revision petitioner is the accused in the case C.C.No.392/2012 on the file of the Court of the Judicial First Class Magistrate-II, Muvattupuzha.

2. The trial court found the petitioner guilty of the

offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') and convicted him thereunder and sentenced him to pay a fine of Rs.10,00,000/- and in default of payment of fine, to undergo simple imprisonment for a period of six months. The trial court also directed that, if the fine amount was realised, it shall be given to the complainant as compensation.

3. The petitioner filed CrI.A.No.75/2016 challenging the conviction entered and the sentence imposed on him by the trial

court. The appellate court confirmed the conviction as well as the sentence against the petitioner and dismissed the appeal. The concurrent findings of guilty, conviction and sentence against the petitioner by the courts below are challenged

in this revision petition.

4. Heard learned counsel for the petitioner and the second respondent.

5. The case of the complainant was as follows: The complainant had entered into an agreement for purchasing the property owned by the accused and his wife. The complainant paid the accused an amount of Rs.10,00,000/- as advance

towards sale consideration. The transaction of sale of property

accused came to the house of the complainant on 20.04.2010 and issued a cheque for Rs.10,00,000/- in discharge of the liability.

6. During the trial of the case, the complainant got herself examined as PW1 and Exts.P1 to P9 documents were marked on her side. DW1 and DW2 were examined and Exts.D1 to D5 documents were marked on the side of the accused.

7. When examined as PW1, the complainant gave evidence in tune with the case put forward by her in the complaint.

8. The plea of the accused was that he had borrowed

money from the complainant and he had paid about Rs.33,00,000/- as interest, by monthly payments ranging from Rs.24,000/- to Rs.33,000/-. However, he could not pay further amount as interest and then the complainant and her son threatened him. Due to intervention of mediators, the accused gave four signed blank cheques as well as a stamp paper to the

complainant as security. Even thereafter, the complainant insisted that the property of the accused shall be sold to him. Then, Ext.D1 agreement was executed with the recital that the complainant had paid Rs.10,00,000/- as advance. The complainant has misused one of the cheques given to her and filed the case.

9. The accused was examined as DW1 and a witness was

examined as DW2. Accused has no right to tender evidence on affidavit in a case under Section 138 of the Act (See Mandvi Co- operative Bank Limited v. Nimesh : AIR 2010 SC 1402). Therefore, strictly speaking, the evidence given by DW1 and DW2 in examination-in-chief by way of affidavit cannot be treated as evidence on record.

10. Even if it is accepted that there is evidence of DW1

and DW2 on record, their testimony do not in any way help the accused to prove that the complainant had not paid an amount of Rs.10,00,000/- as advance for purchasing the property owned by the accused. The reason is that, admittedly, Ext.D1 agreement had been executed by the complainant and the accused in that regard.

11. Ext.D1 agreement would show that the complainant

had paid an amount of Rs.10,00,000/- as advance towards sale consideration. The accused has no case that Ext.D1 agreement was executed by him under threat or coercion or under any other vitiating circumstances. It is also an admitted fact that the transaction of sale of property did not take place. The accused had sent Ext.P7 notice to the complainant demanding specific performance of the agreement for sale of the property. If the agreement for sale of property was executed by the accused under threat or coercion, he would not have sent Ext.P7 notice to the complainant demanding specific performance of the agreement. The trial court has observed that in Ext.P7 notice, the accused has admitted receipt of Rs.10,00,000/- from the complainant as advance towards sale consideration.

12. As rightly pointed out by the appellate court, the plea

of the accused that he had handed over signed blank cheque leaves and blank stamp paper to the complainant also cannot be accepted because Ext.P7 lawyer notice issued by him to the complainant does not contain any such allegation.

13. In the aforesaid circumstances, there is no reason to

disbelieve the evidence of the complainant regarding payment of advance sale consideration by her and issuing of cheque by the accused to repay the amount of advance. The execution of the cheque and delivery of it by the accused to the complainant stand proved by the evidence of PW1. Then the presumption under Section 139 of the Act comes into play. The evidence adduced by the accused rather supports the case of the complainant that the accused issued Ext.P1 cheque towards repayment of the advance paid by the complainant towards sale consideration.

14. The trial court as well as the appellate court has properly analysed the evidence in the case and reached the correct conclusion. There is no impropriety or illegality or perversity in the appreciation of evidence by the courts below warranting interference by this Court in the revisional jurisdiction. Conviction of the accused for the offence under Section 138 of the Act is only to be confirmed.

15. At this juncture, it is also to be noted that there is no merit in the contention of the petitioner that the complaint was

not filed within the prescribed period. The appellate court has rightly negated the contention of the accused in this regard relying upon the decision of the Apex Court in Saketh India Limited v. India Securities Limited (AIR 1999 SC 1090) which has been approved by a larger Bench of the Supreme Court in Econ Antri Limited v. Rom Industries Limited (AIR 2013 SC 3283).

16. The sentence imposed on the accused is only to pay a fine of Rs.10,00,000/-. There is also no ground to interfere with the sentence imposed on the accused.

17. In the result, the revision petition is dismissed. The petitioner/accused is granted a period of three months from today to deposit the amount of fine in the trial court. (SD/-) R.NARAYANA PISHARADI, JUDGE jsr TRUE COPY P.S TO JUDGE