

Veeramani Vs. Reveendran

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Court : Kerala

Decided On : Dec-18-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Veeramani

Respondent : Reveendran

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN THURSDAY, THE 18TH DAY OF DECEMBER 2014 27TH AGRAHAYANA, 1936 CrI.Rev.Pet.No. 2193 of 2014 ()
----- AGAINST THE

JUDGMENT

IN CRA5262008 of ADDL.SESIONS JUDGE-II, THALASSERY, DATED 17-11-2014 AGAINST THE

JUDGMENT

IN S.T.C. 17/2007 of CHIEF JUDICIAL MAGISTRATE, THALASSERY DATED 19-11-2008 ----- REVISION PETITIONERS/APPELLANT/ACCUSED :

----- VEERAMANI, S/O. NANU, AGED 61 YEARS FORMER CASHIER, THALASSERY CO-OPERATIVE URBAN BANK MANJODI BRANCH, THALASSERY, KANNUR DT. BY ADV.

SRI.P.NARAYANAN RESPONDENTS/RESPONDENTS/COMPLAINANT AND
STATE : ----- 1.
REVEENDRAN, S/O. KANARAN, PURATHIKKAD, MANBA ANJARAKKANDI,
KANNUR DT.

2. STATE OF KERALA REP. BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA. R2 BY PUBLIC PROSECUTOR SRI.N.SURESH THIS CRIMINAL
REVISION PETITION HAVING COME UP FOR ADMISSION ON 18-12-2014, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING: VS
K.RAMAKRISHNAN, J.

----- Crl.R.P.No.2193 of 2014 -----
Dated this the 18th day of December, 2014

ORDER

The accused in S.T.C.17/2007 on the file of the Chief Judicial Magistrate Court,
Thalassery, is the revision petitioner herein.

2. The case was taken on file on the basis of a private complaint filed by the first
respondent, under Section 138 of the Negotiable Instruments Act (hereinafter
called 'the Act'). The case of the complainant in the complaint was that, revision
petitioner borrowed a sum of Rs.40,000/-, and in discharge of that liability, he
issued Ext.P1 cheque, which when presented was dishonoured for the reason
'funds insufficient', evidenced by Ext.P2 Crl.R.P.No.2193 of 2014 2 dishonour
memo, and that was intimated by the complainant by his banker vide Ext.P3
intimation letter. The complainant issued Ext.P4 notice vide Ext.P5 postal receipt,
and the same was received by the revision petitioner evidenced by Ext.P6 postal
acknowledgment. He had not paid the amount. So he had committed the offence
punishable under section 138 of the 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 the Bank Manager was examined as PW2, and Exts.P1 and P6 and
Ext.X1 and Ext.X2 were marked on his side. After closure of the complainant's

evidence, the revision petitioner was questioned under Section 313 of Code of Criminal Procedure, and he denied all the incriminating CrI.R.P.No.2193 of 2014 3 circumstances brought against him in the complainant's evidence. He had further stated that, the cheque given in respect of a chity transaction to Gokulam Chit Funds was misused, and the present complaint was filed. In order to prove the same, he had examined DW1 and marked Ext.D1. After considering the evidence on record, the court below found the revision petitioner guilty under Section 138 of the Act, and convicted him thereunder and sentencing him to undergo simple imprisonment for one month and also to pay the cheque amount of Rs.40,000/- as compensation to the complainant, in default to undergo simple imprisonment for one month more under Section 357(3) of Code of Criminal Procedure.

4. Aggrieved by the same, he filed CrI.Appeal.No.526/2008 before the Sessions Court, Thalassery, which was made over to Second Additional Sessions Court, Thalassery, for disposal. The learned Sessions Judge, by the impugned judgment allowed the CrI.R.P.No.2193 of 2014 4 appeal in part, confirming the order of conviction and direction to pay the compensation and default sentence under Section 357(3) of Code of Criminal Procedure, but modified the substantive sentence to imprisonment till rising of the court. Aggrieved by the same, the present revision has been filed.

5. 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 Public Prosecutor appearing for the second respondent, and dispensing with notice to the first respondent.

6. The counsel for the revision petitioner submitted that, the evidence of PW1 will go to show that, there is no possibility for the revision petitioner to give cheque to the complainant as claimed. So he had rebutted the presumptions, and the courts below were not justified in convicting him for the offence alleged . CrI.R.P.No.2193 of 2014 5 7. On the other hand, the learned Public Prosecutor supported the concurrent findings of the court below on this aspect.

8. The case of the complainant in the complaint was that, revision petitioner borrowed a sum of Rs.40,000/-, and in discharge of that liability he had issued

Ext.P1 cheque. But the case of the revision petitioner was that, there was no money transaction between him and the complainant, and the blank signed cheque was given to Gokulam Chit Funds in connection with the chitty transaction was misused, and the present complaint was filed. In order to prove the case of the complainant, the complainant himself was examined as PW1, and he deposed in support of his case in the complainant. Though, he was cross examined at length, nothing was brought out to discredit his evidence regarding the revision petitioner borrowing the amount and issuing Ext.P1 cheque, in discharge of that liability. Further, the evidence of DW1, the CrI.R.P.No.2193 of 2014 6 Manager of the Gokulam Chit Funds, and production of Ext.D1, the chitty account in the name of the revision petitioner with the Gokulam Chit Funds, is not helpful to prove the case of the revision petitioner. DW1 had categorically stated that, no blank cheque has been obtained as claimed by the revision petitioner. Further he had not sent any reply to the notice issued also. That will go to show that, he has nothing to say about the complainant's case mentioned in the notice. So under the circumstances, courts below were perfectly justified in rejecting the contentions of the revision petitioner and accepting the case of the complainant, and convicting the revision petitioner for offence under Section 138 of the Act, and concurrent findings of the court below do not call for any interference.

9. As regards the sentence is concerned, the Trial Court had sentenced him to undergo simple imprisonment for one month, and also to pay the cheque amount of CrI.R.P.No.2193 of 2014 7 Rs.40,000/- as compensation to the complainant, in default, to undergo simple imprisonment for one month, under Section 357(3) of Code of Criminal Procedure. But the Appellate Court had reduced the substantive sentence of imprisonment till rising of court while confirming the direction to pay compensation with default sentence under Section 357(C) of Code of Criminal Procedure. So maximum leniency has been shown by the Appellate Court in imposing the sentence as well, which cannot be said to be excessive.

10. While this court was about to dispose of the case, the counsel for the revision petitioner prayed six months time for payment of the amount, but however considering the fact that the case is of the year 2007, and also considering the amount, this court feels that the time sought for appears to be on the higher side.

However, this court feels that some time can be granted. So revision petitioner is granted time till 18.04.2015 to pay the CrI.R.P.No.2193 of 2014 8 amount, till then, the execution of the sentence is directed to be kept in abeyance. If the revision petitioner pays the amount directly to the complainant, and produces proof of payment of the same, and the complainant appears before the court below and acknowledges receipt of the same, then the court below is directed to treat the same as substantial compliance of payment of compensation as directed by the Courts below and confirmed by this Court and record the same in respective registers, and permit the revision petitioner to serve the substantive sentence of imprisonment till raising of the court imposed by the Appellate Court and confirmed by this court as provided in the decision reported in Beena vs. Balakrishnan Nair and Another [2010 (2) KLT1017 and Sivankutty vs. John Thomas and Another [2012 (4) KLT21. With the above directions and observations, this revision petition is dismissed. Office is directed to CrI.R.P.No.2193 of 2014 9 communicate this order to the concerned courts immediately. Sd/- K. RAMAKRISHNAN, JUDGE /TRUE COPY/ PA TO JUDGE VS CrI.R.P.No.2193 of 2014 10

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