

C.A.Krishnan Vs. Doli

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Court : Kerala

Decided On : Nov-27-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : C.A.Krishnan

Respondent : Doli

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN THURSDAY, THE 27TH DAY OF NOVEMBER 2014 6TH AGRAHAYANA, 1936 CrI.Rev.Pet.No. 1139 of 2007 ()
----- AGAINST THE

JUDGMENT

IN CRA.No.244/2004 of COURT OF ADDL.SESIONS JUDGE, FAST TRACK COURT NO-II, PALAKKAD DATED 31-01-2007 AGAINST THE

JUDGMENT

IN C.C.NO.203/2002 of JUDICIAL FIRST CLASS MAGISTRATE COURT, NO-II, PALAKKAD DATED 06-05-2004 REVISION
PETITIONER(S)/APPELLANT/ACCUSED NO.2:

----- C.A.KRISHNAN
S/O.APPAYI ANAMARI POST, KOLLENGODE, PALAKKAD. BY
ADVS.SRI.P.VIJAYA BHANU SMT.P.MAYA

2. : complainant issued Ext.P5 series notice and they were returned as 'unclaimed' by Ext.P6 series and P7 series acknowledgments. The revision petitioner had not paid the amount. So, he had committed the offence punishable under Section 138 of the Act. Hence the complaint.

4. When the revision petitioner appeared before the court below, the particulars of offences were read over and explained to them and they pleaded not guilty. In order to prove the case of the complainant, the complainant himself was examined as PW1 and Exts.P1 to P8 were marked on his side. After closure of the complainant's evidence, the revision accused were questioned under Section 313 of Code of Criminal Procedure but they denied all the incriminating circumstances brought against them in the complainant's evidence. Their case was that, an amount of Rs.18,200/- was paid and no other amount is due. In order to prove the same, one witness was examined as DW1 and Exts.D1 and D2 were marked. They have further contended that the company was wound up.

5. After considering the evidence on record, the trial court found the first accused not guilty and acquitted them Crl.R.P.No.1139 of 2007 :

3. : but, found the second accused guilty under Section 138 of the Act and convicted him thereunder and sentenced him to undergo simple imprisonment for three months and also to a compensation of Rs.64,500/- in default to undergo simple imprisonment for three months more. Aggrieved by the same, the revision petitioner filed Crl.Appeal.No.244/04 before the Sessions Court, Palakkad and it was made over to Additional Sessions Court, Fast Track No-II, Palakkad for disposal and the learned Additional Sessions Judge by the impugned judgment, dismissed the appeal. Aggrieved by the same, the present revision has been filed by the revision petitioner - accused before the court below.

6. Heard both sides.

7. The Counsel for the revision petitioner submitted that the evidence adduced is not sufficient to attract offence under Section 138 and court below has not considered these aspects.

8. The Counsel for the respondent submitted that court below had considered all the aspects and rightly convicted the revision petitioner.

9. The case of the complainant in the complaint was Crl.R.P.No.1139 of 2007 :

4. : that complainant was a subscriber to the chitty conducted by the company of which the second respondent was the Managing Director. Further, the case of the complainant was that, the amount was not paid and it was settled for an amount of Rs.82,700/- of which Rs.18,200/- was paid by cash and in respect of the balance amount of Rs.64,500/-, the second respondent had issued Exts.P1 and P2 cheques which when presented was dishonoured and in spite of notice issued, they have not paid the amount. Further, it is seen from the evidence that he had issued a personal cheque from the account maintained by him and under the circumstances, court below was perfectly justified in rejecting the contentions of revision petitioner that he is not liable to pay the amount and the cheque was not issued in discharge of any legally enforceable liability is without any substance and rightly rejected those contentions and convicted him for the offence under Section 138 of the Act.

10. As regards the sentence is concerned, the court below sentenced him to undergo simple imprisonment for three months and also to pay compensation of Rs.64,500/-to the complainant in default to undergo simple imprisonment for Crl.R.P.No.1139 of 2007 :

5. : three months under Section 357(3) of Code of Criminal Procedure which was confirmed by the appellate court.

11. In the decision reported in Somnath Sarkar Vs. Utpal Basu Mallick [2013(4) KLT350(SC)], the Hon'ble Supreme Court has held that there is no provision for payment of compensation in 138 cases. But, court has got power to impose fine not exceeding double the cheque amount, out of which, compensation can be awarded after quantifying the fine payable.

12. Further, in the decision reported in Damodar S. Prabhu Vs. Sayed Babalal H. [JT2010(4) SC457, the Hon'ble Supreme Court has held that offences under

Section 138 of the Act are of basically civil nature, but, criminal colour has been given in order to make the drawer of the cheque to pay the amount and collect the same and pay to payee of the cheque. Further, instead of sending the accused to jail, court must always be pragmatic in imposing fine and pay compensation to the complainant.

13. So, considering these aspects, this court feels that the compensation of Rs.64,500/- fixed by the court below can be converted to fine of Rs.70,000/- and directing the fine Crl.R.P.No.1139 of 2007 :

6. : amount if realised be paid to the complainant as compensation will be sufficient and that will meet the ends of justice. So, the sentence imposed by the court below is set aside and the same is modified as follows: The revision petitioner is sentenced to pay a fine of Rs.70,000/- in default to undergo simple imprisonment for three months. If the fine amount is realised, the same be paid to the complainant as compensation under Section 357(1)(b) of Code of Criminal Procedure. If any amount has already been deposited as directed by either by this court or the Sessions Court, then, that may be directed to be adjusted towards this amount. The Counsel for the revision petitioner prays one month time to pay the amount. So, time is granted till 29.12.2014 to pay the amount. Till then, the execution of sentence is directed to be kept in abeyance. If the amount is paid directly to the complainant and proof of payment is produced before the court below and the complainant appears before the court below and acknowledges the same, the same is directed to be treated as substantial compliance of payment of compensation out of fine as directed by this court and the lower court is directed to record the same in the respective registers and close the case as provided in the decisions reported in Beena Vs. Balakrishnan Nair and Another [2010 (2) KLT1017 and Sivankutty Vs. John Thomas Crl.R.P.No.1139 of 2007 :

7. : and Another [2012 (4) KLT21. If the amount is paid directly before that court, court is directed to receive the same. Sd/- K.Ramakrishnan, Judge. Bb True copy]
P.A to Judge