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Babychan Antony Vs. Eldhose

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Court : Kerala

Decided On : Mar-05-2015

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Babychan Antony

Respondent : Eldhose

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN THURSDAY, THE5H DAY OF MARCH201514TH PHALGUNA, 1936 Crl.Rev.Pet.No. 144 of 2015 () ---------- AGAINST THE

JUDGMENT
IN CRL.A5862013 OF ADDITIONAL DISTRICT AND SESSIONS COURT, MOOVATTUPUZHA DATED0412-2014 ---------- AGAINST THE

JUDGMENT
IN C.C.NO.102/2010 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KOTHAMANGALAM DATED3010-2013 ---------- REVISION PETITIONER(S)/APPELLANT /ACCUSED: ---------- BABYCHAN ANTONY AGED40YEARS S/O ANTONY, MUNDACKAL HOUSE, RAMALLOOR

KOTHAMANGALAM BY ADV. SRI.JOHN VIPIN RESPONDENT(S)/RESPONDENT/COMPLAINANT & STATE: ---------- 1. ELDHOSE S/O ELIAS, MAMMOOTTIL HOUSE, VENDUVAZHI KOTHAMANGALAM68669 2. TEH STATE OF KERALA REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA ERNAKULAM68203 R BY PUBLIC PROSECUTOR THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON0503-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Crl.Rev.Pet.No. 144 of 2015 () APPENDIX PETITIONER'S EXHIBITS:- ---------- ANNEXURE-A1-TRUE COPY OF THE COMPLAINT FILED BY THE1T RESPONDENT U/S.138 OF N.I.ACT FOR RS.1,20,000/- AGAINST ONE MR.MADHU.P.P. AS C.C.NO.650/12 BEFORE THE JFCM COURT AT KOTHAMANGALAM. ANNEXURE-A2-TRUE COPY OF THE COMPLAINT FILED BY THE1T RESPONDENT U/S138OF N.I.ACT FOR RS.15,000/- AGAINST ONE MR.BINUKUMAR.T AS C.C.NO.1464/14 BEFORE THE JFCM COURT AT KOTHAMANGALAM. ANNEXURE-A3-TRUE COPY OF THE COMPLAINT FILED BY THE1T RESPONDENT U/S138OF N.I.ACT FOR RS.1,50,000/- AGAINST ONE MR.DEEPU.A.S AS C.C.NO.621/12 BEFORE THE JFCM COURT AT KOTHAMANGALAM. ANNEXURE-A4-TRUE COPY OF THE COMPLAINT FILED BY THE1T RESPONDENT U/S138OF N.I.ACT FOR RS.1,50,000/- AGAINST ONE PATHUMMA.P.E AS C.C.NO.1083/13 BEFORE THE JFCM COURT AT KOTHAMANGALAM. ANNEXURE-A5-TRUE COPY OF THE COMPLAINT FILED BY THE1T RESPONDENT U/S138OF N.I.ACT FOR RS.4,00,000/- AGAINST ONE BEENA SAJI AS C.C.NO.380/13 BEFORE THE JFCM COURT AT KOTHAMANGALAM. ANNEXURE-A6-TRUE COPY OF THE COMPLAINT FILED BY THE1T RESPONDENT AS MANAGING DIRECTOR OF DIAMOND KURIES U/S138OF N.I.ACT FOR RS.2,61,250/- AGAINST ONE SHIMY JOLLY AS C.C.NO.1337/14 BEFORE THE JFCM COURT AT KOTHAMANGALAM. ANNEXURE-A7-TRUE COPY OF THE COMPLAINT FILED BY THE1T RESPONDENT U/S138OF N.I.ACT FOR RS.2,50,000/- AGAINST ONE PREBTHA.M AS C.C.NO.2798/14 BEFORE THE JFCM COURT AT KOTHAMANGALAM. ANNEXURE-A8-TRUE COPY OF THE COMPLAINT FILED BY THE1T RESPONDENT U/S138OF N.I.ACT FOR RS.4,50,000/- AGAINST

ONE LEKHA GIBU AS C.C.NO.1465/14 BEFORE THE JFCM COURT AT KOTHAMANGALAM. ANNEXURE-A9-TRUE COPY OF THE COMPLAINT FILED BY THE1T RESPONDENT U/S138OF N.I.ACT FOR RS.6,00,000/- AGAINST ONE MOLY JOY AS C.C.NO.2815/14 BEFORE THE JFCM COURT AT KOTHAMANGALAM. ANNEXURE-A10-TRUE COPY OF THE COMPLAINT FILED BY THE1T RESPONDENT U/S138OF N.I.ACT FOR RS.80,000/- AGAINST ONE MR.K.B.MANI AS C.C.NO.1484/14 BEFORE THE JFCM COURT AT KOTHAMANGALAM. RESPONDENT'S EXHIBITS: NIL ---------- R.AV //True Copy// PA to Judge K.RAMAKRISHNAN, J ---------- CRL.R.P.NO.144 OF2015---------- Dated this the 5th day of March, 2015

ORDER

---------- Accused in C.C.No.102/2010 on the file of Judicial First Class Magistrate Court, Kothamangalam, is the revision petitioner herein.

2. 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 (herein after called the Act).

3. The case of the complainant in the complaint was that revision petitioner borrowed a sum of Rs.2,15,000/- and in discharge of that liability, he had issued Ext.P1 cheque dated 05.01.2010, which when presented was dishonoured for the reason funds insufficient evidenced by Ext.P2 dishonour memo, he issued Ext.P3 notice vide Ext.P5, but the same was returned with endorsement unclaimed by the addressee vide Ext.P4. 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 offence were read over and explained to him and he pleaded not guilty. In order to prove CRL.R.P.NO.144 OF20152 the case of the complainant, the complainant himself was examined as PW1 and Exts.P1 to P5 were marked on his side. After closure of the complainant's evidence, revision petitioner was questioned under

section 313 of the Code of Criminal Procedure (herein after called the Code) and he denied all the incriminating circumstances brought against him in the complainant's evidence. He had further stated that he had borrowed an amount only Rs.55,000/- and he had paid the amount in January 2010 itself. But the cheque given as security at the time of borrowing the amount was not returned. In order to prove his case, the revision petitioner was examined as DW2 and one witness was examined as DW1. After considering the evidence on record, the court below found that the evidence adduced on the side of the revision petitioner is not acceptable and believable and believed the evidence of complainant and convicted the revision petitioner for the offence under section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for three months and also to pay the cheque amount of Rs.2,15,000/- as compensation to the complainant in default to undergo simple imprisonment for six months under section 357(3) of the Code of Criminal Procedure. Aggrieved by the same, the revision petitioner filed Crl.Appeal No.586/2013 before the Sessions CRL.R.P.NO.144 OF20153 Court, Ernakulam, which was made over to Additional Sessions Court, Muvattupuzha for disposal. The learned Additional Sessions Judge by the impugned judgment allowed the appeal in part confirming the order of conviction and direction to pay compensation but reduced the substantive sentence to imprisonment till rising of court and default sentence to one month. Aggrieved by the same, the present revision has been filed by the revision petitioner- accused before the court below.

5. Though notice was issued on admission to the first respondent he did not appear. Considering the nature of defence and also scope of enquiry, 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 6. The counsel for the revision petitioner submitted that courts below have not properly appreciated the evidence of DWs 1 and 2 and he had rebutted the presumption and as such courts below were not justified in convicting the revision petitioner for the offence alleged. He had further submitted that if for any reasons this court is not inclined to interfere with the conviction and sentence, he prayed for six months time for payment of the amount.

7. The case of the complainant in the complaint was CRL.R.P.NO.144 OF20154 that revision petitioner borrowed a sum of Rs.2,15,000/- and in discharge of that liability, he had issued Ext.P1 cheque. The case of the revision petitioner was that he had borrowed only Rs.55,000/- and he had repaid amount and the cheque given at that time as security was not returned. The complainant himself was examined as PW1 and he deposed of support of his case. He had admitted in his examination that the revision petitioner was having money transaction even earlier and he had paid earlier which he had borrowed earlier and the present amount was given after discharge of the above amounts borrowed and he denied the suggestions that the cheque given at the time when he borrowed Rs.55,000/- and though he paid the amount, the cheque was not returned and misusing the cheque the complainant filed a false complaint. DW1 was one of the witnesses was examined on the side of the revision petitioner to prove the discharge. He had only stated that he was present at the time when the revision petitioner paid Rs.55,000/- But he had admitted in his evidence that he did not know whether the revision petitioner had any other transaction. He had also admitted that he was a close friend of the revision petitioner and he had no explanation to why any document has been obtained regarding the non return of the cheque, which was said to have been given as security at that time when that CRL.R.P.NO.144 OF20155 amount was paid. The same was a case of DW2 the revision petitioner as well. If really the cheque was given as security for the borrowal of Rs.55,000/- which he had already paid, he could have informed the same to the bank and issued stop memo by issuing notice to the complainant which he had not done. Further, he did not receive the notice, when the notice was issued also. He had no case that he would not receive notice in that address. So, under the circumstances, the courts below were perfectly justified in coming to the conclusion that the evidence adduced on the side of the defence is not sufficient to rebut the presumption available under section 139 and 118 of the Negotiable Instruments Act and rightly believed the evidence of PW1 and came to the conclusion that Ext.P1 cheque was issued by the revision petitioner in discharge of the amount due from him as mentioned in the cheque and rightly convicted him for the offence under section 138 of the Act and the concurrent findings of the courts below on this aspect do not call for any interference.

8. As regards the sentence is concerned, though the trial court had sentenced him to undergo simple imprisonment for three months and also to pay a compensation of Rs.2,15,000/- in default to undergo simple imprisonment for six months under section 357(3) of the Code of Criminal CRL.R.P.NO.144 OF20156 Procedure, the appellate court had though confirmed the direction to pay compensation of the cheque amount reduced the substantive sentence to imprisonment till rising of court and default sentence of one month. Maximum leniency has been shown by the court below in imposing the sentence which cannot be said to be excessive warranting interference at the hands of this court. Considering the amount involved, this court felt that the time fo six months requested by the counsel for the revision petitioner is reasonable. So, the revision petitioner is granted time till 05.09.2015 to pay the amount. Till then the execution of the sentence is directed to be kept in abeyance. With the above directions and observations, the revision petition is dismissed. Office is directed to communicate this order to the concerned court immediately. Sd/- K.RAMAKRISHNAN, JUDGE R.AV //True Copy// PA to Judge

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