

Babu Vs. Suresh

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Court : Kerala

Decided On : May-17-2004

Reported in : I(2005)BC604; [2004]122CompCas353(Ker); 2004(2)KLT837

Judge : K.A. Abdul Gafoor, J.

Acts : Negotiable Instruments Act, 1881 - Sections 138

Appeal No. : Crl. A. No. 616 of 1996

Appellant : Babu

Respondent : Suresh

Advocate for Def. : Blaze K. Jose, Adv.

Advocate for Pet/Ap. : G.S. Reghunath,; R.S. Kalkurna,; Mohan Jacob George

Judgement :

K.A. Abdul Gafoor, J.

1. The appellant has come up with this appeal when his complaint under Section 138 of the Negotiable Instruments Act has been dismissed. The only reason for the dismissal is that the cheque in question, Ext.P1, was issued in respect of an account maintained by Suresh Agencies by its proprietor and not by the respondent C. Suresh. Therefore, according to the Court below the

appellant/complainant ought to have filed a complaint against the firm and its proprietor and not against its proprietor in his personal capacity.

2. PW2 is the Bank Manager. He had deposed before the Court below that the account in question against which the cheque was drawn was maintained by M/s. Suresh Agencies of which C. Suresh was the proprietor. The accused did not have a case before the Court below that he was not the proprietor of the said firm. In terms of Section 138 of the Act, when a cheque is bounced, the person who issued it becomes liable for prosecution for the offence under the said provision. In such circumstances whether the cheque is issued by a business firm or not, the person who had drawn the cheque is liable under Section 138.

3. There was no liability on the part of the complaint/appellant to implead the business firm or its proprietor in that capacity. He could have very well launched a complaint against the person who had drawn the cheque whether it is in his capacity as the proprietor of the firm or in personal capacity.

4. In such circumstances, the Court below has erred, while dismissing the complaint holding that 'Ext.PI cheque has not been issued by the accused in his personal capacity, towards the dues to be paid by him to the complainant'.

5. With Regard to the issuance of notice and filing of the complaint there was no dispute.

6. In such circumstances I am satisfied that Ext.PI cheque has been issued by the respondent/accused and that it has been dishonoured as deposed by PW2 for want of sufficient cash in the account. So the respondent/accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act. The judgment of the Court below is therefore set aside and the accused/respondent is found guilty of the offence punishable under Section 138 of the Act.

Accordingly, the respondent/accused is convicted and sentenced to pay a fine of Rs. 60,000/- out of which, if realised, Rs. 50,000/- shall be paid to the appellant/complainant. In case of default to pay the fine, he shall undergo simple imprisonment for a period of six months.

