**Rejikumar Vs. Sukumaran**

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**SooperKanoon Citation** : sooperkanoon.com/723413

**Court** : Kerala

**Decided On :** Mar-25-2002

**Reported in** : 2003(1)ALT(Cri)437; [2002]112CompCas12(Ker); 2002CriLJ3255

**Judge** : M.R. Hariharan Nair, J.

**Acts** : Negotiable Instruments Act, 1881 - Sections 118, 138 and 139

**Appeal No.** : Crl. A. No. 533 of 1999

**Appellant** : Rejikumar

**Respondent** : Sukumaran

**Advocate for Def.** : Aloshyous Thomas, Public Prosecutor

**Advocate for Pet/Ap.** : Sabu Francis, Adv.

**Disposition** : Appeal dismissed

**Judgement** :

**M.R. Hariharan Nair, J.**

1. The complainant in C.C. No. 119/1996 of the Judicial First Class Magistrate's Court, Adimaly, is aggrieved that his complaint filed under Section 138 of the Negotiable Instruments Act with regard to Ext. P1 cheque for Rs. 7,000/- ended in acquittal of the present respondent based on the evidence of PWs. 1 and 2, DW1

and Exts. P1 to P6 and D1.

2. The learned counsel for the appellant submitted that the complainant is entitled to a presumption regarding genuineness and passing of consideration with regard to the cheque and the acquittal of the accused was unjustified. It was also pointed out that there was failure on the part of the accused to subject the signature of the drawer in Ext. P1 to expert examination and that as such his contention that Ext. P1 was not signed by him is unacceptable.

3. On the arguments advanced in the case, the points that arise for decision are:

(1) Whether Ext. P1 is a cheque issued by the respondent?

(2) Whether the accused has committed the offence under Section 138 of the Negotiable Instruments Act?

4. Point No. 1:- Even though the accused had not sent any reply to Ext. P3 notice intimating the dishonour of the cheque, in spite of its receipt on 30.3.1996 as evidenced from Ext. P5, it is stated in his answer to the questions under Section 313 of the Crl.P.C. that the appellant was his friend and he used to visit the vegetable shop of the accused. He also stated that there was possibility that the complainant got hold of a cheque leaf in some manner and that he never signed in Ext. P1 cheque. In short, the case made out is that Ext. P1 is not a cheque actually executed by the accused or delivered to the complainant. In such a case, the presumption under Sections 118 and 139 of the Negotiable Instruments Act would not apply. For the presumption to apply issuance of the cheque has to be admitted or proved.

5. Even assuming that any presumption in favour of the complainant exists, there is evidence available in the case to disprove the same. Even though as PW2, the Manager of the Bank in which the account mentioned in Ext. P1 is maintained, stated that the reason given for dishonour of the cheque was want of funds, he answered further that he had not verified then whether the signature contained was that of the accused. In the circumstances, the accused took up the burden of summoning therelevant records and the same Manager as DW1, produced Ext.

D1 which is the specimen signature card with regard to the account and also deposed that there was no similarity in the signatures contained in Ext. Dl and Ext. P1 He also stated that the said ground was not mentioned in Ext. P2 memo of dishonour as the first verification made on the presentation of the cheque was to see whether there was sufficient credit balance and that in this case as there was no sufficient balance in the account, that reason alone happened to be endorsed in Ext. P2. In fact the occasion for comparison of signatures did not arise then.

6. I have carefully compared the signatures of the drawer of the cheque as available in Ext. P1 with those contained in Ext. Dl as also in the statement given by the accused under Section 313 of the Cr.P.C; in Ext. P5 and in the vakatath executed in the trial court. What is seen is that there is unanimity in the signatures appearing in all the documents except in Ext. P1 which is totally dissimilar to the others. It is very obvious that Ext. P1 does not contain the real signature of the accused.

7. Point No. 2:- It is true that the accused had not sent any reply to Ext. P3 notice and this circumstance goes against the accused. I also notice the fact that in the answer to the last question put under Section 313 of the Crl.P.C., the accused had admitted that there was subsisting liability for Rs. 1,518/-. Notwithstanding these facts, there is no possibility to convict the accused for the offence under Section 138 of the N.I. Act in so far as the signature available is shown to be not of the accused and execution remains unestablished. Probably he is answerable for an offence under Section 420 of the IPC; but in the present case the only question to be looked into is liability under Section 138 of the N.I. Act. It is incumbent upon the complainant, to establish a case under Section 138 of the N.I. Act, that the cheque was dishonoured only for want of funds in the account and not for the reason that the signature differed. In a case where there is no proof of issuance of cheque and the cheque could not have been passed for payment owing to the ground of disparity in signature, there is no question of convicting the accused. Viewed from the said perspective, I find that the complainant has not discharged his burden to show that the accused has committed the offence under Section 138 of the N.I. Act.

In the circumstances, the appeal fails and it is accordingly dismissed.