

Soman Vs. Thomas Paul

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Court : Kerala

Decided On : May-30-2002

Reported in : 2002(2)ALT(Cri)302; II(2003)BC471

Judge : M.R. Hariharan Nair, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 136 and 138

Appeal No. : Crl. R.P. No. 913 of 2001

Appellant : Soman

Respondent : Thomas Paul

Advocate for Def. : K.V. Sabu, Adv. and; L. Alosshyous Thomas, Public Prosecutor

Advocate for Pet/Ap. : K.D. Paul Dalin and; P.A. Augustine, Advs.

Disposition : Criminal revision petition dismissed

Judgement :

ORDER

M.R. Hariharan Nair, J.

1. The challenge in the revision is with regard to the concurrent findings of the Additional Chief Judicial Magistrate (Economic Offence), Ernakulam and the

Sessions Judge, Ernakulam with regard to the conviction entered against the petitioner in C.C. No. 89 of 1997 of the former court for the offence under Section 138 of the Negotiable Instruments Act (for short 'the Act') and the modified sentence imposed by the Sessions Judge, Ernakulam, viz., imprisonment till rising of court and fine of Rs. 32,000/-(in default Simple Imprisonment for two months). The direction that Rs. 29,000/- out of the fine amount should go to the complainant is also challenged.

2. Learned counsel for the petitioner submitted that the conviction is unsustainable for the reason that the complainant failed to produce before the Court the memo of dishonour issued by the drawee bank or any other clinching evidence to show that Ext. P1 cheque was actually dishonoured for want of funds. Ext. P2 produced in the case is only an intimation from the complainant's bank and that cannot be relied upon to show that the cheque bounced for want of funds.

3. I find absolutely no merit in the petitioner's contentions. This is a case where Ext. P3 notice sent by the complainant alleging return of the cheque for want of funds was received by the petitioner as per Ext. P4. There was no reply from the petitioner stating either that the cheque was not dishonoured or that the dishonour was for some reason other than insufficiency of funds.

4. I have carefully perused the evidence of PW. 1. In the chief examination he has asserted that the reason for the return of the cheque was insufficiency of funds. There was absolutely no question put to PW. 1 even by way of a suggestion that the dishonour of the cheque took place for some reason other than want of funds.

5. It is in this background that Ext. P2 has to be perused. It is a letter sent to the complainant from the complainant's bank through which Ext. P1 cheque had been presented for payment. What is done through Ext. P2 is the conveyance of the information received from the accused's bank. It is categorically stated in Ext. P2 that the cheque was returned unpaid for the reason of 'insufficiency of funds'. According to me, in the absence of any counter evidence, nothing more is required to convince the court that the dishonour of the cheque took place for want of funds. It is more so in view of the two circumstances mentioned in the two earlier paragraphs. Of course, in order to succeed in a case of this nature the

complainant has to convince the court, without room for doubt, that the dishonour of the cheque was for insufficiency of funds. The evidence required therefore may take many forms. It is not an inflexible rule that in an action under Section 136 of the Act, the complainant should invariably produce the memo of dishonour issued by the Bank in which the accused has his account certifying that the reason for dishonour is want of funds.

6. There is adequate evidence available in the case. The contention of the petitioner is without any merit or bona fides and the same is rejected.

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