

Syamala Vs. Gopakumar

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Court : Kerala

Decided On : Jan-28-2003

Reported in : I(2004)BC278; 2003(2)KLT918

Judge : R. Basant, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138; Code of Criminal Procedure (CrPC) - Sections 203

Appeal No. : C.R.R.P. No. 788/94

Appellant : Syamala

Respondent : Gopakumar

Advocate for Pet/Ap. : Pirappancode V. Sreedharan Nair, Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

R. Basant, J.

1. Against the dismissal of a complaint under Section 138 N.I. Act the complainant has preferred this Revision Petition.

2. On the fundamental facts there appears to be no dispute at all. The cheque was one for Rs. 75,000/-. It was dated 30th March, 1994. The complainant/revision petitioner herein is not the payee. The payee is the mother of the revision petitioner. The said cheque when presented for encashment was dishonoured on 23rd April, 1994 on the ground that there is no sufficient amount available in the account to honour the cheque. The deceased payee sent a registered notice of demand dated 26th April, 1994. It was returned unclaimed on 19th May, 1994. Within two days of the date on which the demand notice was issued (26th April 1994) the payee died (on 28th April 1994). The accused did not of course make the payment of the amount demanded within the stipulated time to the legal heir. It is in these circumstances that the complainant, as the legal heir of the deceased payee came to the court with a complaint under Section 138 N.I. Act against the accused. The learned Magistrate by the impugned order, held that the complainant is neither the payee nor a holder in due course and that in these circumstances the complaint cannot be maintained under Section 142(a) N.I. Act.

3. Reliance was placed by the learned counsel for the revision petitioner on two decisions reported in *Santhi Balagopal v. Benlide and Anr.*, ILR 1995 (3) Kerala 796 and *Jayarajan v. Jayarajan*, 1992 (2) KLT 586. These decisions do not deal with situations where the competency of the Court to take cognizance under Section 142 was in dispute. They were all cases where after cognizance was taken by the Court the complaint expired and the question was whether the legal heir of the deceased complainant could continue to prosecute the complaint. That question was answered in favour of the legal heirs.

4. In the nature of the facts and circumstances of the case it is not necessary to go into the larger question whether the complainant being the legal heir of the payee would be 'payee' or whether the complainant would be a holder or holder in due course as to justify the initiation of proceedings under Section 142(a) N.I. Act. To me it appears that the impugned Order dismissing the complaint under Section 203 Cr.P.C. can be supported on a different ground. Notice of demand was issued only on 26th April, 1994. For the sake of arguments, we can assume that it was served on the drawer of the cheque/accused on the same date. Even then the accused has 15 days time to pay the amount due to the payee who demanded

payment. Unfortunately, the payee in this case did not survive for the said period. On 28th April, 1994 the payee admittedly expired. It is therefore clear that the notice of demand dated 26th April, 1994 could not be complied with within the period of 15 days prescribed by law as the payee had expired by then.

5. The learned Counsel for the complainant/revision petitioner contends that the drawer has the obligation to make payment to the legal heir of the deceased payee. It is not possible now to ascertain how many legal heirs the deceased payee has. There is nothing to show that the accused/drawer of the cheque was aware of the identity of the legal heir/legal heirs of the payee. They had admittedly made no demand. If this Court were to accept this contention of the learned Counsel for the complainant, it would mulct the drawer of the cheque with the liability to search and find out the legal heirs of the deceased payee and make such payment to them within a period of 15 days. That obviously does not appear to be the statutory mandate. The payee had expired. The accused could not hence comply with the mandatory requirements of Section 138 N.I. Act within a period of 15 days as insisted by law. The liability to search and find out the legal heirs and to pay the amount covered by the cheque to them within the period of 15 days prescribed cannot obviously be read into a penal provision like Section 138 N.I. Act.

6. Different may have been the approach and conclusion of this Court if the death of the payee had taken place after the offence under Section 138 of the N.I. Act had been committed/completed. The question whether the dictum in *Koya Moideen v. Hariharan*, 1996 (1) KLT 389 deserves reconsideration need not in these circumstances be considered in detail in this case. The argument that the legal heir of the payee is not a different person in law is worthy of further consideration in an appropriate case. In these circumstances, I find no reason to invoke the revisional powers of superintendence and correction to interfere with the impugned Order. The challenge fails.

7. In the result, this Revision Petition is dismissed.