

Devi Vs. Haridas

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Court : Kerala

Decided On : Aug-19-2004

Reported in : I(2005)BC273; 2004CriLJ4710; 2004(3)KLT355

Judge : R. Basant, J.

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

Appeal No. : Crl. R.P. No. 1540 of 2004

Appellant : Devi

Respondent : Haridas

Advocate for Def. : P.A.M. Kalam, Public Prosecutor

Advocate for Pet/Ap. : T.R. Ramachandran Nair and; V.G. Arun, Advs.

Disposition : Petition allowed

Judgement :

ORDER

R. Basant, J.

1. Is a person who has not signed the cheque, nevertheless a joint holder of the account which can be operated by any of the account holders, culpably liable under Section 138 of the Negotiable Instruments Act? This is the short question

that arises for determination in this Revision Petition.

2. The petitioner - a woman, has a joint account with the bank. She and her husband are competent to operate the account separately. The cheque in question was issued by her husband, the 1st accused. Such cheque was issued to the complainant for the discharge of a liability of the 1st accused. The cheque was dishonoured on the ground of insufficiency of funds. Notice of demand issued to both the accused did not succeed in securing payment. The petitioner herein (the 2nd accused) specifically asserted in the reply notice that he has no liability under Section 138 of the N.I. Act. The complainant filed a private complaint to initiate criminal proceedings against both the accused under Section 138 of the N.I. Act. The learned Magistrate took cognizance. The petitioner rushed to this Court with Crl.M.C. No. 3720/01 to quash the proceedings against her. That petition was dismissed with the observation that the petitioner must urge the relevant contentions before the Court before which the complaint was pending. The petitioner raised this contention before the learned Magistrate and claimed that proceedings against her may be dropped invoking the dictum in K.M. Mathew v. State of Kerala, 1992 (1) KLT 1. Her prayer was rejected. It is against this order that the petitioner has come before this Court.

3. A look at the law first. Section 138 of the N.I. Act reads as follows:

'138. Dishonour of cheque for insufficiency, etc., of funds in the account.-Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person, shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be; to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.- For the purposes of this section, 'debt or other liability' means a legally enforceable debt or other liability'.

It is evident from a plain reading of the Section that in order to be deemed to be liable under Section 138 of the N.I. Act the cheque must be one drawn by the indittee on an account maintained by him. He becomes liable only if he, the drawer of the cheque, is given notice as insisted by Section 138(b) of the N.I. Act and he, the drawer, does not make payment within the period stipulated under Section 138(c) of the N.I. Act. The conclusion appears to be inevitable that only a drawer of the cheque can be held liable under Section 138 of the N.I. Act.

4. The expression 'drawer' is defined in Section 7 of the N.I. Act as follows:

'The maker of a bill of exchange or cheque is called the 'drawer'.....'.

Is the petitioner the maker of the cheque in question? Obviously, she is not. Admittedly, she has not signed the cheque. It is also of crucial significance that the averments in the complaint clearly show that the cheque in question was issued for the discharge of the liability of the 1st accused. It is admitted that the cheque is not signed by the petitioner - 2nd accused. The only allegation raised against her is that the account is operated by her and her husband - The 1st accused. I extract below the relevant averments in the complaint in the first and third paragraphs (separate numbers are not seen assigned).

'1. In discharge of liability 1st accused herein issued a cheque in favour of the complainant for an amount of Rs. 2,00,000/- (Two lakhs only) dated 14.3.2000 drawn on Canara Bank, Mulankunnathukavu Branch, Trissur. The account is operated by both the accused.

xxx xxx xxx xxx

3..... The cheque is issued by the accused in discharge of his liability and the said cheque stands dishonoured for want of funds'.

5. The mere fact that the petitioner happens to be the spouse of the 1st accused and the account can be operated by either of them cannot, according to me, make the petitioner culpably liable under Section 138 of the N.I. Act for a cheque issued by her husband to the complainant for the discharge of his liability. The averments in the petition clearly show that the petitioner had no liability; that she had not issued the cheque and that she has no personal obligation to discharge the liability to satisfy which the cheque was allegedly issued. The mere fact that the account can be operated jointly by both the accused cannot by any stretch of imagination invite culpable liability under Section 138 of the N.I. Act against the petitioner who was not the drawer and is only a joint account holder.

6. It is significant that the petitioner is not sought to be made liable with the help of Section 141 of the N.I. Act. A perusal of the complaint clearly shows that the petitioner is sought to be Saddled with culpable liability on the sole ground that her husband had issued the cheque in question to discharge his liability and the cheque happens to be drawn on an account which can be jointly operated by the petitioner along with her husband.

7. It follows that sufficient grounds to proceed against the petitioner - 2nd accused under Section 138 of the N.I. Act are not revealed in the complaint and in the sworn statement given by the complainant. Consequently, the petitioner is certainly entitled to get the proceedings against her dropped invoking the dictum in K.M. Mathew (cited supra). Notwithstanding the fact that the proceedings are in a summons case the petitioner is entitled to have the proceedings against her terminated by invoking the dictum in the said decision. She does not deserve to

stand the trauma of this criminal prosecution. De hors the provisions of the Code, she is entitled to be relieved of the unnecessary trauma. The challenge succeeds.

8. In the result:

(a) This Revision Petition is allowed.

(b) The proceedings against the petitioner initiated under Section 138 of the N.I. Act shall stand terminated.

(c) The learned Magistrate shall proceed with the case reckoning the 1st accused as the only accused in the case.

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