Lalu Vs. Kalam

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Court : Kerala

Decided On : Aug-05-2004

Reported in : IV(2005)BC150; 2004(3)KLT1116

Judge : K.A. Abdul Gafoor, J.

Acts : Negotiable Instruments Act, 1881 - Sections 138

Appeal No. : Crl. A. No. 1002 of 1998

Appellant : Lalu

Respondent : Kalam

Advocate for Def. : T.H. Abdul Azeez,; S.K. Harish, Advs. and; T.K. Kunhabdu

Advocate for Pet/Ap. : K.N. Narayana Pillai and; P. Viswanathan, Advs.

Disposition : Appeal dismissed

Judgement :

K.A. Abdul Gafoor, J.

1. The appellant initiated prosecution against the first respondent for the offence punishable under Section 138 of the Negotiable Instruments Act. The prosecution ended in conviction. In the appeal by the first respondent the conviction was set aside and he was acquitted. Therefore, this appeal. The facts of this case are as

follows:

2. Ext. P1 cheque is the cheque in question. It was drawn on 20.7.1993 on Kuruvilassery Service Co-operative Bank for an amount of Rs. 21,500/-. It was sent for collection through the banker of the complainant on 12.1.1994. It was returned bounced as per Ext.P3 memo dated 24.1.1994 of the drawee bank with the endorsement refer to drawer. Obviously, the meaning is that there was no sufficient fund in the account. Statutory notice was issued and the same was returned unclaimed. The amount was not paid. Therefore, the prosecution was initiated.

3. The submission of the appellant is that the Trial Court has rightly appreciating the evidence on record, convicted the first respondent. The Sessions Judge ought not have reversed the conviction. The cheque had been duly presented for collection within six months from the date of the cheque. Therefore, there was due presentation within the time. In such circumstances, it cannot be stated that the cheque was presented beyond six months. Had it been so, the drawee Bank ought to have in Ext.P3 memo mentioned it as a reason. On the other hand, Ext.P3 memo discloses that the cheque was returned with the endorsement refer to drawer. It shows that presentation of the cheque was within the time allowed by the statute. So, the offence had been omitted by the first respondent.

4. It is contended by the first respondent/accused that it is imperative that the cheque shall be presented to the bank and that such presentation shall be the presentation allowed by law. A cheque can be validly presented for collection to the drawee bank within six months from the date of the cheque. In this case, the cheque reached the drawee Bank only beyond six months. Therefore, the complainant was not called upon to make his account active even with sufficient fund to honour a cheque issued far earlier than six months. So, no offence under Section 138 of the Negotiable Instruments Act is made out in this case. In this regard a decision of the Apex Court reported in Ishar Alloy Steels Ltd. v. Jayaswants Neco Ltd., 2001 (2) KLT 148, has been relied on.

5. The facts of the case relied on reveal that it was in respect of a cheque dt. 21.7.1997 presented for payment on 20.1.1998 within six months, which reached

drawer's Bank on 24.1.1998, admittedly after six months from the date it becomes payable. Ext. P3 dishonour memo indicated that its date was 24.1.1998. Considering this aspect the Apex Court held that

'A combined reading of Sections 2, 72 and 138 of the Act would leave no doubt in our mind that the law mandates the cheque to be presented at the Bank on which it is drawn if the drawer is to be held criminally liable. Such presentation is necessarily to be made within six months at the bank on which the cheque is drawn, whether presented personally or through another Bank, namely, the collecting Bank of the payee.'

5. The facts of this case as detailed above are also similar to the one considered by of the Apex Court. Therefore, what is to be examined in this case is when did really, Ext. P1 cheque reach the Bank of the accused. Ext. P3 is the memo which discloses bouncing of the cheque. It is dated 24.1.1994. It does not disclose that the cheque reached that Bank only on 24.1.1994. It only discloses that the Bank of the drawer had written Ext.P3 only on 24.1.1994.

6. But Ext. P8(a), the extract of the account maintained by the banker's of the accused discloses as follows:

'B.C. No. 554 for Rs. 21,500/- returned signed 24.1.1994.'

This indicates that the Bank collection memo with No. 554 had reached the bank of the drawer and has been returned on 24.1.1994. This is beyond six months from the date of the cheque. Necessarily, the decision of the Apex Court squarely applies to the facts of this case. As Ext. P1 cheque had reached the bank of the drawer only beyond six months from its date, the Appellate Court was justified in reversing the conviction and to acquit the accused. In such circumstances, I find no reason for interference.

This appeal fails, dismissed.