

Muraleedharan Vs. Vijayakumar

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SooperKanoon Citation : sooperkanoon.com/728192

Court : Kerala

Decided On : Jul-05-2006

Reported in : 2006(4)KLT342

Judge : K.S. Radhakrishnan, J.

Acts : Negotiable Instruments Act - Sections 138; Code of Criminal Procedure (CrPC) - Sections 216; [Indian Penal Code \(IPC\), 1860](#) - Sections 420

Appeal No. : Crl. R.P. No. 861 of 1997

Appellant : Muraleedharan

Respondent : Vijayakumar

Advocate for Def. : N.A. Muraleedharan, Public Prosecutor

Advocate for Pet/Ap. : T.K. Venugopalan,; Mathew K. Philip,; Devan V. and;

Disposition : Petition dismissed

Judgement :

ORDER

K.S. Radhakrishnan, J.

1. Complainant is the revision petitioner. Revision Petition is filed against the order of Judicial First Class Magistrate, Kolenchery rejecting the complainant's

application under Section 216 of the Code of Criminal Procedure for inclusion of charge under Section 420 IPC.

2. Revision petitioner herein filed a private complaint against the accused alleging that he has committed the offence punishable under Section 138 of the Negotiable Instruments Act. It is alleged that the complainant gave Rs. 1,25,000/- as loan on condition that the accused has to repay the amount within two months. Amount was not repaid. When demanded the accused gave a cheque dated 14.8.1995 for the said amount. Complaint was filed against the accused alleging that he had committed offences punishable under Section 138 of the Negotiable Instruments Act and also under Section 420 IPC. Thereafter sworn statement of the complainant was taken by the court on 19.10.1995. On the basis of the sworn statement of the complainant the court took cognizance of the offence under Section 138 of the Negotiable Instruments Act. Later case was posted for evidence. Complainant was examined and he was cross examined by the defence. The case of the accused is one of total denial. In the course of evidence it was admitted by the complainant that the accused was not an account holder of South Indian Bank, Muvattupuzha Branch. Under such circumstance the complainant filed the petition for altering the charge under Section 420 which was rejected by the Court below stating that the accused had made only a promise for payment of the amount within two months and there was no inducement by the accused to the complainant at the initial stage in order to constitute an offence under Section 420 of the Indian Penal Code.

3. I have perused the records. From the records it is seen that the case of the complainant is that he had given Rs. 1,25,000/- as loan to the accused on condition that the accused would repay the amount within two months. The amount could not be repaid by the accused within the time stipulated. When the money was demanded, accused gave a cheque dated 14-8-95 for the said amount. Facts would indicate that at the time of money transaction no cheque was given by the accused to the complainant, but only a promise was made that the amount would be paid within two months, which would indicate that there was no inducement by the accused to the complainant at the initial stage of the transaction. In order to constitute an offence under Section 420 IPC there must be

some inducement by the accused to the complainant at the initial stage, which is lacking in this case. Apex Court in Hari Prasad v. Bishun Kumar : 1974 CriLJ352 took the view in the facts of that case that there is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35,000/-. Apex court held that there is nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000/- by deceiving him. A Division Bench of the Calcutta High Court in M.S. Natarajan v. Ramasis Shaw 1995 CrL.L.J. 2011 in an almost identical case held that in order to constitute an offence under Section 420 IPC, there must be some inducement by the accused to the complainant at the initial stage. The court held that during the time of transaction no cheque was given to the complainant by the accused but only a promise was made that payment would be made within ninety days from the date of delivery of the materials, there was no inducement at the initial stage constituting an offence under Section 420 IPC.

4. Facts of this case would indicate that when the accused had borrowed the amount of Rs. 1,25,000/- from the complainant he had only promised that he would repay the amount within two months. Amount was not repaid. When the amount was demanded accused gave a cheque for the said amount which was later bounced. Therefore, it is clear that at the time of money transaction there was only a promise that the amount would be paid within two months. In fact there was no inducement at the initial stage of the transaction. In order to constitute an offence under Section 420 IPC there must be some inducement by the accused to the complainant at the initial stage of the transaction which is lacking in this case. Under such circumstance I find no infirmity in the order passed by the court below. Revision therefore lacks merit and the same would stand dismissed.