

Ramachandran Vs. Dinesan

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Court : Kerala

Decided On : Nov-04-2004

Reported in : 2005(1)ALD(Cri)38; I(2006)BC526; 2005CriLJ1237; 2005(1)KLT353

Judge : K. Padmanabhan Nair, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 87 and 138

Appeal No. : Crl. R.P. No. 757 of 2003

Appellant : Ramachandran

Respondent : Dinesan

Advocate for Def. : M. Ramesh Chander, Adv. and; P.A. Raziya, Public Prosecutor

Advocate for Pet/Ap. : P.P. Ramachandran and; Sheji P. Abraham, Adv.

Disposition : Revision petition allowed

Judgement :

ORDER

K. Padmanabhan Nair, J.

1. The revision petitioner was found guilty of an offence punishable under Section 138 of the Negotiable Instruments Act, convicted and sentenced to pay a fine of

Rs. 35,000/- and in case of default of payment of fine, to undergo simple imprisonment for three months. He filed CrI.A.122 of 1999 before the Sessions Court challenging the conviction and sentence. The learned Sessions Judge confirmed the conviction, but modified the sentence to that of a fine of Rs. 5,000/- and in default of payment of fine, to undergo simple imprisonment for three months. This Criminal Revision Petition is filed challenging the conviction and sentence imposed on the petitioner.

2. The first respondent filed a complaint against the revision petitioner alleging that he borrowed an amount of Rs. 1,25,000/- from him and when a demand for repayment of that amount was made, Ext.P1 cheque was issued. It was also alleged that when the cheque was presented for collection, the same was dishonoured for want of sufficient funds in the account maintained by the revision petitioner with the Bank. A notice demanding repayment of the amount covered by the cheque was issued. But, the revision petitioner did not pay the amount. Hence the complaint.

3. On the side of the complainant, PW.1 was examined. Exts.PI to P9 proved and marked. After the prosecution evidence was over, the accused was questioned under Section 313 of the Code of Criminal Procedure. He denied all the allegations levelled against him. On the side of the accused, DWs. 1 and 2 were examined and Exts.D1 to D5 proved and marked. The learned Magistrate found the revision petitioner guilty of the offence alleged, convicted and sentenced him as aforesaid. In appeal the learned Sessions Judge confirmed the conviction, but reduced the sentence to that of a fine of Rs. 5,000/- and in default of payment of fine, to undergo simple imprisonment for three months. If the fine amount is paid or realised, an amount of Rs. 4,000/- was ordered to be given to the complainant as compensation.

4. The learned counsel appearing for the revision petitioner has argued that there is material alteration in Ext.PI cheque. It is contended that originally the figure written in the cheque was Rs. 25,000/- and the figure '1' was added subsequently. It is argued that both the Courts had concurrently found that there was correction in the figures. It is argued that correction of the figure written in a cheque

subsequently without the knowledge of the drawer is a material alteration which makes the document void. It is argued that once the negotiable instrument is found to be void, it cannot be held that any legally recoverable debt is due from the maker of that document and hence the conviction and sentence imposed on the petitioner are illegal.

5. The main contention raised is that figure '1' was subsequently inserted in Ext.P1 cheque. The learned Magistrate himself had found that there was slight difference in the ink used for writing '1', but it was found that if '1' was subsequently written, the last figure '0' was also subsequently written. Since the accused had no case that '0' was also subsequently added; the contention that there was material alteration in the cheque was rejected.

6. The learned Sessions Judge also found that there was reason to believe that the figure '1' was subsequently inserted before the other figures. The learned Sessions Judge found that 'any way the accused having admitted that he had signed Ext.PI cheque, he can succeed in the case only if he could prove his case otherwise'.

7. I have perused the disputed cheque. The word '1' appears to be added subsequent to the writing of the other figures. Even if the last figure '0' was also added subsequently, that does not make any difference. The complainant had no case that the corrections were effected with the knowledge and consent of the drawer. When the amount once written is corrected without the knowledge and consent of maker of the cheque, that amounts to material alteration.

8. In *Loonkaran Sethia v. Ivan E. John*, AIR 1977 SC 336, the Apex Court had considered the effect of material alteration in the document. It was held as follows:--

'If an alteration (by erasure, interlineation, or otherwise) is made in a material part of a deed, after its execution, by or with the consent of any party to or person entitled under it, but without the consent of the party or parties liable under it, the deed is rendered void from the time of the alteration so as to prevent the person who has made or authorised the alteration, and those claiming under him, from

putting-the deed in suit to enforce against any party bound by it, who did not consent to the alteration, any obligation covenant, or promise thereby undertaken or made'.

It was further held as follows:--

'A material alteration, is one which varies the rights, liabilities or legal position of the parties, as ascertained by the deed in its original state, or otherwise varies the legal effect of the instrument as originally expressed, or reduces to certainty some provision which was originally unascertained and as such void, or which may otherwise prejudice the party bound by the deed as originally executed.

The effect of making such an alteration without the consent of the party bound is exactly the same as that of cancelling the deed'.

The principle laid down in that decision was followed by a Division Bench of this Court in Bhaskaran Chandrasekharan v. Radhakrishnan, 1998 (1) KLT 881, it was held that alteration of the date in the cheque may be material alteration. In this case the amount written in figures were corrected. That will amount to material alteration. So, I hold that there is material alteration of Ext.PI cheque.

9. The next question to be considered is what exactly is the effect of material alteration. Section 87 of the Negotiable Instruments Act deals with the effect of material alteration. It reads as follows:--

'87. Effect of material alteration.-- Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties.

Alteration by indorsee.-- And any such alteration, if made by an indorsee discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of Sections 20, 49, 86 and 125'.

The basic principle of law is that any change in a written instrument which changes the legal identity or business character of the instrument, either in its terms or in the legal relation of the parties to it, is a material alteration and such a change invalidates the instrument against the person not consenting to the change. This principle of law is essential to the integrity and sanctity of contracts. By alteration, the identity of the instrument is destroyed. So, the effect of making a material alteration on a negotiable instrument without the consent of the party bound under it is exactly the same as that cancelling the instrument. The instrument is rendered void only as against any one who is a party thereto and not against anyone becoming a party subsequent to the alteration. If a person indorses an altered instrument without the knowledge of the alteration he may be liable to the indorsee. A person who accepts an altered instrument cannot absolve his liability on the acceptance on account of the previous alteration.

10. In *Jawahar Trading Corporation v. Ramadas*, 1989 (2) KLT 932, this Court had considered the effect of material alteration of a negotiable instrument. It was held as follows :--

'Any material alteration of a negotiable instrument renders the same void against any one who is a party thereto at the time of making the alteration and does not consent thereto, unless, it was made in order to carry out the common intention of the original parties. Addition of parties to a contract is a material alteration. Adding stamps and signatures and corrections in signatures and writings are also material alterations. Failings of parties to raise specific pleas in that respect should not deter the Court in considering how the law should be applied to proved facts. The principle of law in this respect embodied in Section 87 of the Negotiable Instruments Act is essential to the integrity and sanctity of contracts. It is intended to prevent fraud and deter men from tampering with written securities. It is repugnant to the policy of law to permit the holder of a negotiable instrument to attempt a fraud of this kind with impunity. By the alteration, the identity of the document itself is destroyed. To hold one liable under the circumstances is to make him liable for a contract which he never agreed. The burden is on the plaintiff in such circumstances to show that the alteration was not improperly made. An alteration which varies the rights, liabilities or legal position of the parties

ascertained by the deed in its original state or otherwise varies the legal effect of the instrument as originally expressed, or reduces to certainty some provision which was originally unascertained is a material alteration. To make an alteration material it is not necessary that it should adversely affect the party who raises that plea'.

It is true that the decision was rendered in a suit filed by the holder of the cheque against the drawer. That principle is applicable to criminal cases also. Under Section 138 of the Negotiable Instruments Act to make a person criminally liable the cheque must have been one issued in discharge of whole or in part of debt or liability. Further the cheque should have been dishonoured for insufficiency of fund or that it exceeds the amount arranged to be paid from the account. Still further, the debt must be a legally recoverable debt. Explanation to Section 138 makes it very clear. It reads as follows:--

'138. Dishonour of cheque for insufficiency, etc., of funds in the account.

XXX XXX XXXExplanation.' For the purpose of this section, 'debt or other liability' means a legally enforceable debt or other liability'.

When the document itself is a void one, it cannot be held that legally recoverable debt is due under that document. Since the explanation to Section 138 of the Negotiable Instruments Act defines the expression 'debt or liability' unless it is established that the debt in question is a legally enforceable one it would not attract the consequence provided under the Section even if it is returned unpaid due to insufficiency of funds or the amount arranged to be paid from the drawers account by an agreement made with the Bank. Unless the condition set out in Section 138 of the Negotiable Instruments Act are satisfied, no criminal liability can be fastened on the accused. So, if there is any material alteration in the cheque which renders it void, no criminal prosecution can be launched based on such a cheque. The Courts below had not considered this material aspect while holding that the revision petitioner is guilty of an offence under Section 138 of the Negotiable Instruments Act. Since the cheque itself is an invalid one, no prosecution is possible under such a document and the revision petitioner is entitled to an acquittal.

In the result, the Criminal Revision Petition is allowed. The conviction and sentence imposed on the revision petitioner under Section 138 of the Negotiable Instruments Act are hereby set aside. He is found not guilty of the offence and acquitted. He is set at liberty. Fine, if any, paid shall be refunded to him.

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