

Dassan Vs. Ranimol

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Court : Kerala

Decided On : Jul-10-2002

Reported in : I(2003)BC314

Judge : Hariharan Nair, J.

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

Appeal No. : C.R.A. No. 313/98

Appellant : Dassan

Respondent : Ranimol

Advocate for Def. : A. Krishnan, Adv.

Advocate for Pet/Ap. : Mathews J. Nedumpara and; K.N. Sathyarajan, Advs.

Judgement :

M.R. Hariharan Nair, J.

1. The appellant who was the complainant in S.T. 183/1995 of the GJM Court, Alappuzha is aggrieved that the complaint filed by him alleging offence under Section 138 of the Negotiable Instruments Act against the respondent herein resulted in acquittal of the accused.

2. The allegation in the complaint was that towards dues under business transaction the accused gave Ext. P1 cheque to the complainant and that when presented for payment it bounced for want of funds and that in spite of the statutory notice, the amount remains unpaid.

3. The petitioner gave evidence as PW1. The accused, it appears, took up the stand that Ext. P1 cheque was issued on behalf of a concern by name 'Simpson Coir Works' and hence the accused who is an individual has no liability. In the impugned judgment the learned Magistrate, however, rejected the said contention and found that the cheque was issued by the accused as proprietress of 'Simpson Coir Works' and not in any other capacity. The evidence with regard to dishonouring of the cheque for want of funds, issuance of notice, etc. were also found to be adequate. The only reason for granting acquittal to the accused was the fact that the cheque stands in the name of 'M/s. Sindhu Coir Traders' and the complainant is not the said business concern, but an individual.

4. On the arguments advanced in the case, the points that arise for decision are:

1) Whether the acquittal of the accused is justified?

2) Reliefs?

5. Point No. 1:- Sri. Mathews J. Nedumpara, who appeared for the appellant submitted that the name of 'M/s. Sindhu Coir Traders' is actually the business name of the complainant C.G. Dassan who is the proprietor of the business and that in the circumstances there was no justification for discarding the complainant's case.

6. On a perusal of the evidence it is seen that absolutely no evidence has been adduced by the complainant to establish that he is the proprietor of the particular business concern. The complaint is filed by. C.G. Dassan, 'Sindhu Coir Traders', Thumpoli, Alappuzha. The prefix M/s. used in Ext. P1 might lead to an indication that it is actually a partnership firm. If it is not actually a partnership, but an individual's proprietary concern, the burden to prove that lies on the complainant. Even before this Court no evidence is adduced to show that the complainant has

been carrying on a business under the particular name and style. In the circumstances, the complainant would not be entitled to get the relief prayed for unless it is established that the cheque was issued to him and that the particular business concern mentioned as payee, of the cheque was owned by him.

7. Point No. 2:- In spite of my finding under point No. 1 , I do not think that the complaint deserves to be rejected without a further opportunity to the complainant to prove the above aspect.

8. In the circumstances, the impugned judgment is set aside and the matter is remitted to the trial court with the following directions:

An opportunity will be given to the complainant to establish the fact that he is the proprietor of 'M/s. Sindhu Coir Traders', which is shown as payee in Ext. P1 cheque. Needless to say that the accused would also be questioned under Section 313 of the Cr.P.C. in the light of the prospective evidence. If so desired, defence witnesses also should be allowed to be examined. After collection of such further evidence the case will be disposed of afresh and in accordance with law.