Mathew George Vs. Jacob

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SooperKanoon Citation : sooperkanoon.com/729471

Court : Kerala

Decided On : Dec-12-2005

Reported in : III(2006)BC21; 2006(1)KLT126

Judge : K. Thankappan, J.

Acts : Negotiable Instruments Act, 1881 - Sections 9, 138 and 139; Evidence Act, 1872 - Sections 9, 11, 145 and 155; Code of Criminal Procedure (CrPC) - Sections 202

Appeal No. : W.P. (C) No. 30499 of 2005

Appellant : Mathew George

Respondent : Jacob

Advocate for Def. : K.J. George, Public Prosecutor

Advocate for Pet/Ap. : T.N. Hareendran and; Lissy T. Skaria, Advs.

Disposition : Petition dismissed

Judgement :

K. Thankappan, J.

1. The petitioner seeks to stay all further proceedings in C.C.No. 1134 of 2001 on the file of the Judicial First Class Magistrate's Court I, Ernakulam.

2. The petitioner is the accused in C.C.No. 1134 of 2001 pending before the court below. The above Calendar Case was taken on file on the basis of a complaint filed by the first respondent alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The court below took cognizance of the complaint. During trial, the petitioner raised a question with regard to the identity of the signatory of the cheque in question as there was no clear evidence regarding the same. The petitioner produced photographs of four different persons to identify the accused from among the photographs. The grievance of the petitioner is that the court below adjourned the case without considering the point raised by the petitioner.

3. Learned Counsel for the petitioner submits that the complainant has no case with regard to the signature in the cheque and hence the complaint filed against the petitioner is without merit.

4. Sections 9, 11, 145 and 155 of the Indian Evidence Act, 1872 provide methods for identifying an accused. But, those sections are not applicable to the case in hand as it is a case filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act'). Section 138 of the Act reads as follows:

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 provision 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.

5. A reading of the above Section would clearly indicate that as and when a cheque signed in discharge of a legally enforceable debt is dishonoured, the offence under Section 138 of the Act comes into existence. Further, as per Section 139 of the Act, there is a presumption in favour of the holder of the cheque. It is the burden of the complainant to prove that the cheque was signed by the drawer in discharge of a legally enforceable debt. If such burden is proved, the presumption under Section 139 of the Act comes into force in favour of the complainant. In such circumstances, the identity of the signatory of a negotiable instrument does not arise. Further, as per Section 9 of the Act, a complaint can be filed by a person who is the holder in due course of a negotiable instrument like the cheque. That apart, in the decision reported in Venugopalan v. Prakasan, 1985 KLT 615, this Court had taken the view that when a private complaint is filed before the court, the court is expected to make an enquiry under Section 202 Cr.P.C. only with regard to the offence alleged and not with regard to the identity of the accused who committed the offence. In the above circumstances, identity of the signatory of a cheque is not a question to be considered by the trial court.

The Writ Petition is accordingly dismissed.