

thethavusamy Vs. Radhakrishnan

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Court : Kerala

Decided On : Aug-18-2006

Reported in : 2007(1)KLT226

Judge : K.N. Basha, J.

Acts : Indian Penal Code (IPC) - Sections 34, 323, 354, 379 and 448; [Code of Criminal Procedure \(CrPC\) , 1973](#)

Appeal No. : Cri.A. Nos. 769 of 1998 and 235 of 2006

Appellant : thethavusamy

Respondent : Radhakrishnan

Judgement :

K.N. Basha, J.

1. Criminal Appeal No. 769 of 1998 is filed by the complainants challenging the acquittal of the respondent accused for the alleged offence under Sections 448, 354, 379 read with 34 I.P.C.

2. Criminal Appeal No. 235 of 2006 is filed by the accused challenging the conviction and sentence imposed for an offence under Section 323 of I.P.C. to pay a fine of Rs.200/-in default to undergo simple imprisonment for two months.

3. In view of the appeal against the acquittal filed by the complainants, the appeal preferred before the Sessions Court by the accused is transferred to this Court.

4. The learned Counsel for the appellants as well as the learned Counsel for the respondents in both the matters submitted that this is a matter relating to a dispute regarding the purchase of a house on the basis of an agreement entered into between the accused and the complainants.

5. It is seen from the records that the complaint was preferred by two persons namely Dr. J.A. Thethavusamy and Mrs. Arlette Alyisus. It is brought to the notice of this Court by the learned Counsel appearing for both the parties, a decision of this Court reported in the case of Krishnamurthy R. v. M.P. Raja (1989) MLJ (Crl.) 13 : 1989 L.W.(Crl.) 186 to the proposition that complaint made by two persons jointly in respect of one and the same occurrence or transaction is not valid. In paragraphs 4 and 5 of the said decision, the learned Single Judge has held as follows:

4. As regards the validity of the complaint is concerned, it is contended that one complaint cannot be filed by two persons; the learned Counsel appearing for the petitioners would contend that the complaint filed by two persons jointly is not in the contemplation of the scheme of the Code of Criminal Procedure and produced before me two decisions

(1) Sashadhar Acharya v. Sir Charles Tegari AIR 1931 Calcutta 646 wherein it was held that 'A joint complaint by two persons is not contemplated by the Code' and

(2) Narayanaswami v. Egappa Reddi 1961 MWN (Crl.) 129 wherein it was held that 'A complaint could be filed by only one person. There is no provision in the Criminal Procedure Code for joint complaints'.

The learned Counsel appearing for the other side would concede that the complaint filed as such was not in order and that it will be possible either to file fresh complaints or to see that one of the complainants withdraws from the complaint.

5. The resulting position is that the complaint as it was filed is not valid; all the subsequent steps taken by the learned Magistrate on the complaint are to be considered as not legal and are thereby quashed. If the complaint is revised in a legal manner in one way or the other, the learned Magistrate will deal with it afresh in accordance with law.

6. It is also seen from the decision of this Court as cited supra that this Court followed earlier decision rendered by this Court reported in 1962 M.W.N.(Crl.) 129 as well as Calcutta High Court reported in AIR 1931 Cal. 646.

7. In this case, admittedly, the complaint was preferred by two persons viz., Dr. J.A. Thethavusamy and Mrs. Arlette Alyisus. Therefore, the above said proposition of law laid down by the decision stated supra are squarely applicable to the facts of this instant case. In view of the same, this Court is left with no other alternative except to allow the appeal preferred by the accused in Crl.A. No. 235 of 2006 and the conviction and sentence imposed on the accused for the alleged offence under Section 323 I.P.C. and to pay a fine of Rs.200/- in default to undergo 2 months S. I. is hereby set aside. If the fine amount paid, the same is directed to be refunded to the appellants. In view of allowing of the appeal No. 235 of 2006, the appeal preferred by the complainants in Crl.A. No. 769 of 1998 is dismissed.