Ravi Chandran Vs. Subramanian

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Court : Kerala

Decided On : Jun-24-2005

Reported in : 2006(1)KLT611

Judge : M. Thanikachalam, J.

Acts : Negotiable Instruments Act - Sections 135 and 138

Appeal No. : Crl. A. No. 282 of 1999

Appellant : Ravi Chandran

Respondent : Subramanian

Disposition : Appeal dismissed

Judgement :

M. Thanikachalam, J.

1. The complainant, in C.C.No. 204 of 1997 on the file of the Judicial Magistrate No. VI, Coimbatore, having failed in his attempt to get a conviction against the respondent/accused, has come to the Court as appellant, seeking the same relief.

2. It is the case of appellant/complainant, that the accused/respondent along with another, had borrowed a sum of Rs. 90,000 on 4.7.1994, that in order to discharge the said debt, he had issued a cheque dated 19.3.1997 for a sum of Rs. 1,47,000,

which includes interest, that when the cheque was tendered for collection, the same was returned with an endorsement 'funds insufficient', that even after the issue of mandatory notice, the accused failed to pay the cheque amount and in this view, since he had committed the offence under Section 138 of the Negotiable Instruments Act, he should be dealt with accordingly.

3. The accused/respondent upon appearance appears to have not only denied the liability, but also the issuance of the cheque in favour of the complainant for the alleged discharge of liability.

4. The trial Court, after recording evidence, while scanning the same, came to the conclusion, that though the cheque was issued on behalf of Southern Biologicals, the non-inclusion of its owner is not fatal and that the complainant has failed to prove that the cheque was issued by the accused to discharge the liability. Thus concluding, the respondent/ accused was acquitted as per the judgment dated 12.11.1998, which is under challenge in this appeal.

5. Heard the learned Counsel for the appellant, M. Sathyanarayana.

6. The learned Counsel for the appellant would contend, that there are sufficient materials to prove not only the liability, but also to prove that the cheque in question was issued for the discharge of the same and therefore, the dismissal of the complaint, acquitting the accused is against evidence, warranting interference by this Court.

7. After hearing the submissions made by the learned Counsel for the appellant, and by going through the documents as well as the reasonings assigned by the trial Court, I am unable to find any merit in the appeal and in fact for the reasons, which I am going to assign infra, though it may not be in conformity with the findings given by the trial Court, the appeal deserves only dismissal, confirming the acquittal of the respondent, though he is not represented by the counsel.

8. It is the case of the prosecution, that M/s. Southern Biologicals probably a proprietary concern, had borrowed a sum of Rs. 90,000 from the complainant on 4.7.1994 and evidencing the same, a xerox copy of the promissory note is marked

and no reason is assigned for not producing the original. In the absence of original, it is not known, how the xerox copy was admitted as secondary evidence. Only in order to discharge the liability said to have been incurred by the respondent under Ex.P-1, it is said that the cheque was issued on 19.3.1997, which is exhibited as Ex.P-2. Ex.P-2 cheque was drawn by M/s. Southern Biologicals, though the accused had signed in the cheque as mandate holder. Therefore, one thing is clear that the liability was incurred only by M/s. Southern Biologicals and therefore, the Proprietor of that company or firm must be held responsible. After all, the accused whether he is known as C. Subramanian or C.S. Maniam, as the case may be, cannot be held personally responsible. Unfortunately, when this defence was raised by the accused before the trial Court, the trial Court has given a finding as if the non-joinder of M/s. Southern Biologicals will not affect the case of the prosecution. In this context, we have to see the provisions of the Negotiable Instruments Act (hereinafter called 'the Act').

9. Section 138 of the Act is clear that the person liable to answer this penal provision is only the person, who had drawn the cheque, which could be seen from the opening words 'where any cheque drawn by a person on an account maintained by him...' thereby indicating, the person liable to be dealt with under Section 138 of the Negotiable Instruments Act or the person answerable under Section 138 of the Act must be the person, who had drawn the cheque and who is having the account, in which account the cheque was drawn and not others. In this case, as seen from the materials available on record, the cheque was drawn by M/s. Southern Biologicals. The account holder is M/s Southern Biologicals. The accused respondent is only a mandate holder, who was competent and authorised to sign on behalf of the account holder or on behalf of the drawer. Therefore, the mandate holder certainly will not come within the meaning of a person 'cheque drawn by a person' or 'on an account maintained by him'. This being the position, the complaint ought to have been filed against the owner, or proprietor of M/s. Southern Biologicals, who was maintaining the account, who had drawn the cheque, though it was signed by the mandate holder. In this context, we have to further see, who is the mandate holder, what is his duty.

10. 'Mandate' means in the commercial circle as per the law lexicon:

A mandate is a contract by which a lawful business is committed to the management of another, and by him undertaken to be performed without reward.

It is also further seen from the said definition, a mandate is an act by which one person gives power to another to transact for him and in his name, one or several affairs. From the above definition, it is crystal clear that the role of the mandate holder is limited. In the sense, obeying the mandate or any of the member and in this way alone, the accused in this case had signed in the cheque as mandate holder and therefore, as such, he cannot be held responsible for the non-payment or the amount.

11. In view of the specific provisions available under Section 135 of the Act, the mandate holder is not the drawer in the real sense, as it should be understood for the purpose of Section 138 of the Act and it is also an admitted position, that the mandate holder is not the account holder, though he is the authorised signatory on behalf of the account holder. Unfortunately, the trial Court without going into the details, placing reliance upon some decision, in my opinion, has committed an error in concluding, that the case is not bad for non-joinder of the owner or M/s Southern Biological firm or company, as the case may be. For the foregoing reasons, it is clear that the case has not been filed against the account holder in whose account the cheque was drawn. In this view, the finding of the trial Court in this regard is liable to be set aside and it should be held that the case itself is not maintainable, which would follow, no question of conviction shall arise.

12. The learned Counsel for the appellant fairly brought to my notice a decision of this Court in G. Rukkumani v. K. Rajendran 2001 Crl.L.J. 3120, wherein also it is held that the mandate giver cannot be let off on the ground that he had not signed in the cheque concluding there was no liability under the Negotiable Instruments Act, when it is shown the cheque was issued to discharge the liability. In the case involved in the above decision, the mandate holder as well as the account holder were shown as accused in an offence corning under Section 138 of the Negotiable Instruments Act. In that case, the person, who had given the mandate to the person, who had signed in the cheque, claimed that since he has not signed in the cheque, he is not liable to answer the claim and in this way, she sought discharge

from the case. While, considering the above said facts, as well as considering the decision relied on by the trial Court, this Court has correctly come to the conclusion, 'the mandate-giver cannot shrug off the claim of the demand of the opposite party under the Negotiable Instruments Act, when the cheque was issued to discharge the partial liability', which principal is squarely applicable to the present case also. In this case, if the mandate giver viz., the account holder had been arrayed as accused, then there might have been, a chance for convicting that person, considering the liability as well as the fact that the issuance of the cheque by the mandate holder for the discharge of the said liability and this kind of chance was also not given by the complainant to the Court. In this view, the case must fail.

13. As far as another finding of the trial Court that the prosecution has failed to prove the signature of the accused in the disputed cheque, appears to be acceptable. Though it is proved that on and from 27.11.1995, the accused has changed his name from C. Subramanian, as C.S. Maniam, that alone will not absolve the liability. Even after changing his name, from some other purpose, he might have continued the practice of signing his name as C. Subramaniam. Therefore, only on the basis that the cheque contains the name as C. Subramanian, it is not possible to come to the conclusion that there was no liability. There is a promissory note, followed by the cheque. It is highly improbable to come to the conclusion, that these two documents must have been forged or concocted for the purpose of the case. In this view, the finding of the trial Court, that the prosecution has failed to prove the issuance of the cheque is not acceptable to me, considering the fact that the cheque belongs to M/s. Southern Biologicals, for which the accused was acting as a mandate holder. This finding will not in any way change the result of the case viz., the acquittal, in view of the fact, the case has not been filed against the proper person, in whose account, the cheque was drawn. For the foregoing reasons, the appeal deserves dismissal, though not for the reasons recorded by the trial Court but for the reasons recorded by me supra.

14. In the result, the appeal fails and the same is dismissed, confirming the acquittal. Appeal dismissed.