

Sasseriyl Joseph Vs. Devassia

Sasseriyl Joseph Vs. Devassia

SooperKanoon Citation : sooperkanoon.com/731471

Court : Kerala

Decided On : Sep-22-2000

Reported in : 2001CriLJ24

Judge : N. Krishnan Nair, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138; Indian Contract Act - Sections 25(3)

Appeal No. : Cri. A. No. 161 of 1994

Appellant : Sasseriyl Joseph

Respondent : Devassia

Advocate for Def. : Grashious Kuriakose, Adv. and V.K. Mohanan, P.P.

Advocate for Pet/Ap. : A.K. Basheer, Adv.

Disposition : Appeal dismissed

Judgement :

N. Krishnan Nair, J.

1. This appeal has been preferred by the complainant in C.C. No. 449/91 on the file of the Judicial First Class Magistrate, Mattannur, against the judgment of acquittal passed by the Additional Sessions Judge, Thalassery in Cri. Appeal No.

212/92 dated 28-8-1993. The case arose on a complaint filed by the appellant herein against the respondent alleging the commission of the offence punishable under Section 138 of the Negotiable Instruments Act. After the trial, the Magistrate found the respondent (accused) guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and convicted him. He was sentenced to pay a fine of Rs. 15,000/-, in default to undergo rigorous imprisonment for three months. Aggrieved by the order of conviction and sentence, the respondent herein preferred Cri. Appeal No. 212 of 1992. The learned Additional Sessions Judge set aside the conviction and sentence imposed upon the respondent and acquitted him. JR/KR/Ke355/2000/PYB-RK/USA Aggrieved by the order of acquittal passed by the learned Additional Sessions Judge, the complainant has come up with this appeal.

2. The case of the complainant in brief is that the accused in discharge of a loan of Rs. 12,000/- advanced by the complainant issued a cheque dated 25-8-1991 for the said amount and the said cheque when presented for encashment was dishonoured by the Bank due to insufficiency of funds in the account of the accused. Thereafter, the complainant sent a legal notice to the accused demanding payment of the amount mentioned in the dishonoured cheque within 15 days from the date of the notice. But, the accused was not prepared to comply with the notice. Thereupon, proceedings were initiated against the accused before the Magistrate, alleging the commission of the offence punishable under Section 138 of the Negotiable Instruments Act.

3. The accused pleaded not guilty. He contended that he had borrowed only an amount of Rs. 10,000/- from the complainant in October, 1987 and, the said amount with interest was paid back in April, 1990. However, he admitted that he issued the cheque in question for Rs. 12,000/- under duress and threat from the police.

4. The appellant was examined as PW1 and the Branch Manager of the Anappanthi Service Co-operative Bank was examined as PW2. Exts. P1 to P7 were also marked on the side of the complainant. The defence examined DW1 to DW4 and marked Exts. D1 to D6.

5. The learned counsel for the appellant strongly contended that the order of the Court below is clearly illegal and cannot be sustained either in law or on facts. According to the learned counsel, the learned Additional Sessions Judge ought to have found that the promise made by the accused to repay the time barred debt would come within the purview of Section 25(3) of the Indian Contract Act. He further contended that the learned Additional Sessions Judge seriously erred in finding that the accused is not guilty of the offence under Section 138 of the Negotiable Instruments Act. On the other hand, the learned counsel for the respondent supported the judgment of the lower Court and urged that there is no ground for interference.

6. The only question that arises for consideration in this appeal is whether the respondent who issued the cheque in question in discharge of a time barred debt is liable under Section 138 of the Negotiable Instruments Act. In this case, the complainant had admitted that the loan was advanced to the accused in January, 1988 and the cheque was issued in February, 1991. Thus, by the time the cheque was issued, the debt was barred by limitation since there was no valid acknowledgement of the liability within the period of limitation. According to the learned counsel for the appellant, the promise made by the accused to repay the time barred debt would come within the purview of Section 25(3) of the Indian Contract Act. No doubt, the promise to pay a time barred cheque (debt) is valid and enforceable, if it is made in writing and signed by the person to be charged therewith. But, it is clear from Section 138 of the Negotiable Instruments Act that in order to attract the penal provisions in the bouncing of a cheque in Chapter XVII, it is essential that the dishonoured cheque should have been issued in discharge, wholly or in part, or any debt or other liability of the drawer to the payee. The explanation to Section 138 defines the expression debt or other liability as a legally enforceable debt or other liability. The explanation to Section 138 reads as under :-

Explanation :- For the purpose of this section, 'debt or other liability' means a legally enforceable debt or other liability.

7. Thus, Section 138 is attracted only if the cheque is issued for the discharge of a legally enforceable debt or other liability. In this case, admittedly, the cheque in question was issued in discharge of a time barred debt. It cannot be said that a time barred debt is a legally enforceable debt. In this connection, it is also relevant to note the decision of the Andhra Pradesh High Court reported in *Girdhari Lal Rathi v. P.T.V. Ramanujachari* 1997 (2) Crimes 658. It has been held in that case that if a cheque is issued for a time barred debt and it is dishonoured, the accused cannot be convicted under Section 138 of the Negotiable Instruments Act simply on the ground that the debt was not legally recoverable. I am fully in agreement with the view expressed by the learned Judge in the decision referred to above.

8. The learned counsel for the appellant placed strong reliance on the decision of the Madras High Court reported in *S. Krishnamurthy v. A. R. Rajan* 1996 Cri Law Journal 3552. In that case, it was contended for the accused that the cheque in question dated 23-4-1989 alleged to have been issued in respect of the debts including under the promissory notes dated 20-3-1985 and 8-4-1985 is not in respect of legally enforceable debts or liabilities, within the meaning of Section 138 of the Negotiable Instruments Act since the debts under the pro-notes are barred by limitation on the date of issuance of the cheque dated 23-4-1989. But, the Court found that in respect of the alleged two time barred pro-notes, the accused has paid interest on various dates and thereby the pro-notes have not become time barred. In this case, the complainant has no case that the accused has paid interest on the amount borrowed from him in 1987 and there is valid acknowledgement of the debt within the period of limitation. As noticed earlier, since there was no acknowledgment of the debt before the expiry of three years from the date of loan, the debt was not legally enforceable at the time of issuance of the cheque.

9. For the reasons stated above, I find no reason to interfere with the order of acquittal passed by the learned Additional Sessions Judge. I see no infirmity in the judgment of the lower Court. This appeal is groundless and is liable to be dismissed.

In the result, the Appeal is dismissed.

