

Chitaranjan Vs. Jayarajan

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SooperKanoon Citation : sooperkanoon.com/732233

Court : Kerala

Decided On : Jan-17-2003

Reported in : IV(2005)BC167; 2005(1)KLT790

Judge : R. Basant, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138; [Evidence Act, 1872](#) - Sections 65

Appeal No. : Crl. R.P. Nos. 1043 and 1044 of 1994

Appellant : Chitaranjan

Respondent : Jayarajan

Advocate for Def. : N. Nandakumara Menon, Adv. and; P.M. Habeeb, Public Prosecutor

Advocate for Pet/Ap. : Sasthamangalam G. Gopalakrishnan Nair, Adv.

Disposition : Petition allowed

Judgement :
ORDER

R. Basant, J.

1. In these Revision Petitions the very same petitioner/complainant assails the dropping of criminal proceedings initiated by him against the very same common respondent/accused in respect of two cheques under Section 138 of [Negotiable Instruments Act, 1881](#). The petitioner/complainant alleged that the respondent/accused had issued two cheques each for Rs. 35,000/- with different dates for the discharge of a legally enforceable debt/liability. The cheques were dishonoured on the basis of stop memos issued by the accused. Notices of demand were issued. But they did not succeed in securing payments. It was stated in reply that the cheques for the specified amount were actually issued but they were not issued for the discharge of any legally enforceable debt/liability. The complainant came to the Court alleging the commission of the offence punishable under Section 138 of N.I.Act. According to the complainant he had brought the original cheques to the Court at the time of filing the complaints and the Court had permitted him to keep originals leaving the photostat copies in the Court. This submission is strenuously disputed by the learned counsel for the respondent. Whatever that be, in Court only copies of the cheques were left. When the matter came up for trial the complainant submitted that the original cheques were lost and a crime had been registered in respect of such loss of cheques. The complainant was examined in part and the Court directed him to produce the original cheques. As he could not produce the cheques, the complainant filed affidavit to explain the circumstances under which he was not able to produce the cheques. Thereupon the learned Magistrate without proceeding further, invoking his powers under the decision reported in K.M. Mathew v. State of Kerala, 1992 (1) KLT P.1, proceeded to pass the impugned common orders directing discontinuance of the proceedings.

2. The respondent/accused has entered appearance. The learned counsel for the petitioner submits that there is no dispute between the parties about the facts of issue of cheques and their dishonour etc. The cheques were actually lost. In these circumstances the complainant is not in a position to produce the cheques. The counsel submits that the complainant is in these circumstances entitled to adduce secondary evidence about the cheques. As per Section 65 of the Evidence Act such secondary evidence is admissible also. The learned Magistrate erred grossly in not giving such an opportunity and in terminating the proceedings. It is in these circumstances prayed the impugned order may be set aside.

3. The learned counsel for the respondent submits that the theory of loss of cheques is unacceptable. He asserts that the cheques were not produced at the first instance and it is clearly shown that it was not a case of loss of cheques. It is in these circumstances submitted that the impugned order does not warrant interference.

4. I have considered the submission. I have gone through the records. I am of the opinion that the Court below was certainly wrong in prematurely dropping/discontinuing further proceedings against the accused in the two cases. The decision reported in 1992 (1) KLT 1 does, of course, clothe a criminal court to discontinue the proceedings de hors the provisions of the Code of Criminal Procedure. But such powers ought to be invoked sparingly and in exceptional cases. If really as a matter of fact, the cheques are lost it would be improper and incorrect to deny the complainant an opportunity to substantiate his grievance by adducing secondary evidence as permitted under Section 65 of Evidence Act. I make it clear that I have not intended to express any opinion on the question whether such secondary evidence can be acted upon or not. That is of course, for the Court below to consider at the appropriate stage. At any rate, premature discontinuance of the proceedings was, certainly incorrect and improper. The challenge succeeds.

5. In the result,

a) These criminal Revision Petitions are allowed.

b) The learned Magistrate is directed to continue the proceedings and dispose of C.C. 132/93 and C.C. 151/93 as expeditiously as possible.

c) The parties are directed to appear before the learned Magistrate on 28.4.2003 to continue the proceedings.