

L. Selva Vs. Asokan

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Court : Chennai

Decided On : Jul-02-2009

Reported in : 2009CriLJ4025

Judge : G. Rajasuria, J.

Acts : Negotiable Instruments Act - Sections 138; Code of Criminal Procedure (CrPC) - Sections 313 and 401

Appeal No. : Crl.R.C. No. 1443 of 2006

Appellant : L. Selva

Respondent : Asokan

Advocate for Def. : P. Chandrasekaran, Adv.

Advocate for Pet/Ap. : No appearance

Judgement :

ORDER

G. Rajasuria, J.

1. Animadverting upon the order dated 9.10.2006 passed by the Principal Sessions Judge, Vellore, in C.A. No. 25 of 2006, modifying the order dated 8.2.2006 passed by the Judicial Magistrate IV, Vellore, in C.C. No. 264 of 2005,

this criminal revision case is focussed.

2. A resume of facts, which are absolutely necessary and germane for the disposal of this criminal revision case would run thus:

(a) The respondent herein filed the complaint under Section 138 of the Negotiable Instruments Act as against the revision petitioner herein. The revision petitioner entered appearance and contested the matter. Whereupon, the trial was conducted.

(b) During trial, the respondent herein examined himself as P.W.1 along with one Srinivasan as P.W.2 and Exs.P1 to P8 were marked. The revision petitioner herein examined himself as R.W.1 and Exs.R1 to R5 were marked.

(c) Ultimately, the trial Court recorded the conviction under Section 138 of N.I. Act and sentenced the revision petitioner herein to undergo one year simple imprisonment and to pay a compensation of Rs. 29,850/-.

(d) Being aggrieved by and dissatisfied with the judgement, the appeal C.A. No. 25 of 2006 was filed before the Principal Sessions Judge, Vellore, which Court reduced the substantive sentence of imprisonment from one year to three months and the rest of the sentence imposed by the trial Court was confirmed.

3. Challenging and impugning the judgements of both the Courts below, this revision case is focussed on various grounds, the gist and kernal of them would run thus:

The Courts below erred in considering the defence in the proper perspective and simply held as against the accused. They failed to see that the complainant in his letter-Ex.D5 dated 5.2.2004, assured that he would not present the cheque, but would return it back after getting his problem solved. As such, without considering the documents relied on by the defence and also the probabilities of the defence, the matter was disposed of by both the Courts below. The lower Court also failed to consider that the complainant falsely denied his signature in Ex.D5 and the assistance of hand writing expert was not taken to verify the genuineness of that signature. The Court also could have verified it, but it had not done so. The

accused sent a reply to the complainant's notice as revealed by Ex.D3, despite that the complainant misused the cheque.

4. In spite of opportunities given to the revision petitioner/accused, no one represented him. Heard the arguments of the learned Counsel for the respondent/complainant.

The point for consideration is as to whether there is any perversity or non-application of law on the part of the lower Court in recording the conviction as against the accused and imposing the sentence.

5. The learned Counsel for the respondent/complainant would invite the attention of this Court to the fact that the accused instead of complying with the statutory notice issued by the complainant, simply veered round and took a plea quite antithetical to what he committed himself in black and white by having a volte face and both the Courts below gave the finding of fact based on records, warranting no interference by this Court. He would also submit that this Court, while exercising its revisional jurisdiction would be reluctant to interfere with the finding of fact unless there is any perversity or non-application of law on the part of either of the Courts. But in this case, the trial Court discussed threadbare the facts and the evidence and arrived at the conclusion, which was confirmed by the appellate Court, after once again considering the pros and cons of the matter.

6. At this juncture, my mind is reminiscent and redolent of the following decisions of the Honourable Apex Court:

(i) 2002 Scc (CrI) 1448 - Bindeshwari Prasad Singh alias B.P. Singh and Ors. v. State of Bihar (now Jharkhand) and Anr.; an excerpt from it would run thus:

13. The instant case is not one where any such illegality was committed by the trial court. In the absence of any legal infirmity either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction. It has repeatedly been held that the High Court should not reappreciate the evidence to reach a finding different from the trial court. In the absence of manifest illegality resulting in grave miscarriage of justice, exercise of

revisional jurisdiction in such cases is not warranted.

14. We are, therefore, satisfied that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional jurisdiction at the instance of the informant. It may be that the High Court on appreciation of the evidence on record may reach a conclusion different from that of the trial court. But that by itself is no justification for exercise of revisional jurisdiction under Section 401 of the Code of Criminal Procedure against a judgment of acquittal. We cannot say that the judgment of the trial court in the instant case was perverse. No defect of procedure has been pointed out. There was also no improper acceptance or rejection of evidence nor was there any defect of procedure or illegality in the conduct of the trial vitiating the trial itself.

(ii) 2005 Scc (Cri) 276 - Sathyajit Banerjee and Ors. v. State of W.B. and Ors., an excerpt from it would run thus:

22. The cases cited by the learned Counsel show the settled legal position that the revisional jurisdiction, at the instance of the complainant, has to be exercised by the High Court only in very exceptional cases where the High Court finds defect of procedure or manifest error of law resulting in flagrant miscarriage of justice.

7. A bare perusal of those decisions would exemplify and demonstrate that the High Court, while exercising its revisional jurisdiction is not expected to interfere with the finding of fact arrived at by both the Courts below simply because one other view is possible or a different view could be taken.

8. What I could understand from the records is that there is one other complaint case instituted by the respondent herein under Section 138 of N.I. Act as against the same accused and in that case also, the trial Court recorded the conviction and imposed the sentence and the appellate Court confirmed the findings, whereupon one other Crl.R.C.1445 of 2006 was filed by the same revision petitioner herein. However, no common order was passed by the lower Court in both the matters and those matters were dealt with separately. Hence, there is no embargo for disposing of this criminal revision case separately.

9. On the complainant side, the complaint examined himself as P.W.1 and relied on as many as eight documents, viz., Exs.P1 to P8. It appears the accused examined himself as D.W.1 and in one other C.C. No. 263 of 2004 he marked Exs.D1 to D5 and perhaps he relied upon those exhibits as defence documents in this case also. The lower Court in paragraph No. 14, au fait with law and au courant with facts, correctly remarked that during cross-examination under Section 313 of Cr.P.C. the accused in no way detailed or delineated, explained or expounded anything relating to Ex.D5 and in fact, Ex.D5 was denied by the complainant.

10. The contention of the accused that Ex.D5 should have been sent for expert opinion is neither here nor there. It is not the complainant, who relied on Ex.D5. But, it is the revision petitioner/accused, who relied on it and as such, the onus of proof was on him to take steps. But there is nothing to indicate that he took steps to take assistance of an expert to prove the purported signature of the complainant in Ex.D5 was that of the complaint only. Without admitting but even assuming that there were some correspondences as in Ex.D5, that clearly indicates that the cheque was issued for some specific debt or liability and in such a case, it is not open for the accused to try to capitalise his own laches and fault. The fact remains that he issued the cheque and to that effect there is a clear finding by the trial Court.

11. Indubitably and indisputably, incontrovertibly and unassailably, the liability of the accused subsists relating to the cheque. The complainant discharged his burden of proof by marking the aforesaid eight documents on his side, but as correctly observed by both the Courts below, the accused had not proved his defence. I am fully aware of the fact that an accused in a criminal case is not expected to prove anything. But in cases of this nature, when the prosecution has succeeded in proving the case, the burden got fobbed off on the side of the accused, even preponderance of probabilities of his defence were not highlighted during trial, as correctly observed by the lower Court and as confirmed by the first appellate Court. Hence, in these circumstances, I am of the considered opinion that this Court can see no perversity or non-application of law in finding the accused guilty of the offence under Section 138 of N.I. Act.

12. Relating to the sentence is concerned, already the first appellate Court showed enough leniency in reducing the substantive sentence of one year simple imprisonment to three months simple imprisonment. Still in view of the fact that the cheque itself was for Rs. 29,850/- I am of the considered opinion that the substantive sentence of imprisonment could be reduced to two months, which would meet the ends of justice and the compensation awarded by the trial Court and confirmed by the appellate Court is confirmed.

13. The criminal revision case is ordered accordingly. The trial Court shall take steps to secure the presence of the accused and send him to jail to undergo the two months simple imprisonment, if not already undergone.

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