

Joseph Mathew Vs. State of Kerala

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Court : Kerala

Decided On : Nov-28-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Joseph Mathew

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN FRIDAY, THE 28TH DAY OF NOVEMBER 2014 7TH AGRAHAYANA, 1936 CrI.Rev.Pet.No. 384 of 2004 (C) ----- AGAINST THE

JUDGMENT

IN CrI.APPEAL 502001 of ADDL. DISTRICT & SESSIONS COURT (ADHOC-II) (FAST TRACK), KOZHIKODE, DATED 23/09-2003 & AGAINST THE

JUDGMENT

IN CC 4581999 of J.M.F.C.-I, THAMARASSERY, DATED 09/01-2001 REVISION PETITIONER(S)/APPELLANT/ACCUSED:

----- JOSEPH MATHEW, S/O. MATHEW, THANNIKKAL HOUSE, (RETD. HEADMASTER), INGAPUZHA VILLAGE, KOZHIKODE TALUK. BY ADVS. SRI. GEORGE THOMAS RAMAPURAM SMT. ANNIE M. LOVELY THOMAS

RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

----- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. FATHER PAUL PUTHENPURA, VICAR, ST.MARY'S CHURCH,
KATTULLAMALA, CHERUKAD, ATHIYODI AMSOM AND DESOM, KOZHIKODE
TALUK. R1 PUBLIC PROSECUTOR SRI. N. SURESH. THIS CRIMINAL
REVISION PETITION HAVING BEEN FINALLY HEARD ON 28.11.2014, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING: ss K.
RAMAKRISHNAN, J.

..... Crl. R. P. No.384 of 2004
..... Dated this the 28th day of November,
2014

ORDER

There is no representation for the petitioner even today. Since steps was not taken to complete service on the 2nd respondent, it was posted in the defect list on 22.11.2014, on that day, there was no representation. However this court has granted time to take steps within three days and posted the case to 26.11.2014, but even on that day, there was no representation and no steps was taken and posted to today in the disposal list. Even today, there is no representation. Since the revision has already been admitted, it cannot be dismissed for non-prosecution. Considering the nature of dispute and scope of enquiry and also it is a case involving offence under Section 138, this court felt that, the same can be disposed of on merit, considering the contentions raised by the revision petitioner in the lower court.

2. Revision petitioner is the accused in Crl. R. P.No.384 of 2004 2 C.C.No.458/1999 on the file of the Judicial First Class Magistrate Court-I, Thamarassery. The case was taken on file on the basis of a private complaint filed by the complainant under Section 138 of the Negotiable Instruments Act (hereinafter called 'the Act').

3. The case of the complainant in the complaint was that, revision petitioner borrowed a sum of 1,50,000/- as loan and in discharge of that liability, he had issued Ext.P1 cheque, which when presented was dishonored for the reasons 'funds insufficient', evidenced by Ext.P2 dishonour memo and also evidenced by Ext.P5 and P6 account extract and cheque return register maintained in the bank. Complainant issued Ext.P3 notice vide Ext.P3(a) postal receipt and the same was received by the revision petitioner evidenced by Ext.P4 acknowledgment. He had not paid the amount. So he had committed the offence punishable under Section 138 of the Negotiable Instruments Act. Hence the complaint.

4. When the revision petitioner appeared before Crl. R. P.No.384 of 2004 3 the court below, the particulars of offence were read over and explained to him and he pleaded not guilty. In order to prove the case of the complainant, the complainant himself was examined as PW1 and Exts.P1 to P6 were marked on his side. After completion of the complainant's evidence, the revision petitioner was questioned under Section 313 of the Code of Criminal Procedure and he denied all the incriminating circumstances brought against him in the complainant's evidence. He had further stated that, he had not issued the cheque and no evidence was adduced on his side in defence to prove his case. After considering the evidence on record, the court below found the revision petitioner guilty under Section 138 of the Act and convicted him thereunder and sentenced him to undergo simple imprisonment for three months and also to pay a fine of 5,000/-, in default to undergo simple imprisonment for thirty days more. Dissatisfied with the same, the complainant filed Criminal Appeal No.50/2001 before the Sessions Court, Kozhikode, which was made over to Crl. R. P.No.384 of 2004 4 Additional Sessions Court(Adhoc-II), Kozhikode, for disposal, and the learned Additional Sessions Judge, allowed the appeal in part, confirming the order of conviction, but modified the sentence by sentencing the revision petitioner to undergo simple imprisonment for one month and also to pay compensation of 1,50,000/- to the complainant, in default to undergo simple imprisonment for sixty days. Aggrieved by the same, the present revision has been filed by the revision petitioner/accused before the court below.

5. The case of the complainant in the complaint was that, the accused borrowed 1,50,000/- and issued the disputed cheque in discharge of that liability. The transaction was denied by the revision petitioner. The complainant who is working as paster in a church gave evidence as PW1 and explained the source raised by him to pay the amount. Though he was cross examined at length, nothing was brought out to discredit his evidence on this aspect. Further he had proved the execution and delivery CrI. R. P.No.384 of 2004 5 of Ext.P1 cheque by the revision petitioner as well. The revision petitioner had not sent any reply to the notice issued. Further he did not adduce any evidence to prove the circumstance under which his cheque has reached the hands of the complainant as well. There is nothing to disbelieve the case of PW1 on this aspect. Further, if the possession of the cheque and the signature of the revision petitioner in the cheque are proved by the complainant and also delivery of the cheque after due execution are proved by the complainant, then the burden shifts to the revision petitioner to rebut the presumption available to the complainant under Section 139 of the Act. That burden was not discharged by the revision petitioner. So under the circumstances, courts below were perfectly justified in convicting the revision petitioner for the offence under Section 138 of the Act and the concurrent finding of the courts below do not call for any interference.

6. The court below had sentenced him to undergo simple imprisonment for three months and also to CrI. R. P.No.384 of 2004 6 pay a fine of 5,000/-, in default to undergo simple imprisonment for thirty days. But the appellate court had reduced the substantive sentence to one month simple imprisonment, but awarded 1,50,000/- as compensation, though it was mentioned as fine, to the complainant with default sentence of sixty days simple imprisonment.

7. In the decision reported in (2002(1) KLT581 Suganthi v. Jagadeeshan, the Hon'ble Supreme Court has held that, though court has no power to award fine amount more than 5,000/- as the law stood at that time, it has got the power to grant compensation more than the fine amount, which even go to the extent of the cheque amount with default sentence.

8. So the appellate court was perfectly justified in awarding the cheque amount as compensation to the complainant with default sentence, invoking the power under Section 357(3) of the Code of Criminal Procedure. But having awarded the cheque amount as compensation, the appellate court was not justified in imposing one month Crl. R. P.No.384 of 2004 7 substantive imprisonment, which appears to be harsh. So the same can be reduce to imprisonment, till rising of the court. So the substantive sentence is reduced to imprisonment till rising of court, while this court is confirming the order of compensation with default sentence passed by the appellate court under Section 357(3) of the Code of Criminal Procedure. With the above modification of the sentence alone, the revision petition is allowed in part and disposed of. Office is directed to communicate this order to the concerned court, immediately. Sd/- K. RAMAKRISHNAN, (Judge) // True Copy// P.A. to Judge ss

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