

Sajitha Vs. State

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Court : Kerala

Decided On : Nov-28-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Sajitha

Respondent : State

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. 1358 of 2014 ()
----- AGAINST THE

JUDGMENT

IN CrI.APPEAL NO.406/2012 of ADDL. SESSIONS COURT (ADHOC- III) (FAST TRACK COURT-III), PALAKKAD, DATED 14-06-2013 & AGAINST THE

JUDGMENT

IN CC1782009 of J.M.F.C.-III, PALAKKAD, DATED 24-09-2012 REVISION PETITIONER(S)/APPELLANT/ACCUSED:

----- SAJITHA, W/O.VIMAL
KUMAR, AMMINIAMMA NIVAS, SELAVAPALAYAM, KALMANDAPAM
PALAKKAD. BY ADV. SRI. VINOD KUMAR.C
RESPONDENT(S)/RESPONDENT/COMPLAINANT:

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

2. RAJA. R (DIED) S/O.RAJAGOPAL, 2/308 GOVINDARAJAPURAM,
KALPATHY, PALAKKAD.

3. SEETHALAKSHMI, W/O.RAJAGOPAL, 2/308 GOVINDARAJAPURAM,
KALPATHY, PALAKKAD. (2ND RESPONDENT/COMPLAINANT IS NO MORE
AND 3RD RESPONDENT IS HIS MOTHER AND IMPEADED AS HIS LEGAL
HEIR) R1 BY 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.1358 of 2014 . . .
..... Dated this the 28th day of November,
2014

ORDER

Accused in C.C.No.178/2009 on the file of the Judicial First Class Magistrate Court-III, Palakkad, is the revision petitioner herein. The case was taken on file on the basis of a private complaint filed by the original 2nd respondent against the revision petitioner, alleging offence under Section 138 of the Negotiable Instruments Act (hereinafter called 'the Act').

2. The case of the complainant in the complaint was that, revision petitioner borrowed a sum of 1,00,000/- and in discharge of that liability, she had issued Ext.P1 cheque, which when presented was dishonored for the reasons 'funds insufficient', evidenced by Ext.P2 dishonour memo. Complainant issued Ext.P3 notice to the revision petitioner intimating dishonour and Crl. R. P. No.1358 of 2014 2 demanding payment of the amount, vide Ext.P4 postal receipt and the same was received by the revision petitioner evidenced by Ext.P5 postal acknowledgment. He had not paid the amount. So she had committed the offence punishable under Section 138 of the Negotiable Instruments Act. Hence the

complaint.

3. When the revision petitioner appeared before the court below, the particulars of offence were read over and explained to her and she pleaded not guilty. In order to prove the case of the complainant, the complainant himself was examined as PW1 and Exts.P1 to P5 were marked on his side. Since the revision petitioner was primarily exempted, her 313 examination was dispensed with, as per proviso to Section 313(b) of the Code of Criminal Procedure. No evidence was adduced on her side in defence. After considering the evidence on record, the court below found the revision petitioner guilty under Section 138 of the Act and convicted her thereunder and sentenced her to undergo simple CrI. R. P. No.1358 of 2014 3 imprisonment for three months and also to pay a fine of 1,00,000/-, in default to undergo simple imprisonment for three months more. It is further ordered that, if the fine amount is realised, the same was directed to be paid to the complainant as compensation under Section 357(1)(b) of the Code of Criminal Procedure. Aggrieved by the same, the revision petitioner filed Criminal Appeal No.406/2012 before the Sessions Court, Palakkad, which was made over to Additional Sessions Court (Adhoc-III), Palakkad, for disposal, and the same was dismissed by the learned Additional Sessions Judge, confirming the order of conviction and sentence passed by the court below. Dissatisfied with the same, the present revision has been filed by the revision petitioner/ accused before the court below. After disposal of the criminal appeal, the original complainant died and her mother was impleaded as 3rd respondent, as she is the only legal heir, as the complainant was a bachelor.

4. In spite of notice issued in the delay CrI. R. P. No.1358 of 2014 4 condonation application, she did not appear. The delay was condoned and the case was posted today for admission. Considering the scope of enquiry and nature of contentions raised, this court felt that the revision can be disposed of at the admission stage itself, after hearing the counsel for the revision petitioner and learned Public Prosecutor appearing for the first respondent and dispensing with notice to the 3rd respondent.

5. The counsel for the revision petitioner submitted that, the complainant had not proved his case. Further his case was that, when she joined the shop as an employee a blank signed cheque was obtained as security by the owner of the shop which was mis-used and the present complaint was filed. So once the execution is disputed, the burden is on the complainant to prove the case which he has not discharged. So the revision petitioner is entitled to get acquittal.

6. Learned Public Prosecutor supported the concurrent findings of the court below. CrI. R. P. No.1358 of 2014 5 7. The case of the complainant in the complaint was that, revision petitioner borrowed a sum of 1,00,000/- and in discharge of that liability, he had issued Ext.P1 cheque. The case of the revision petitioner was one of total denial. In order to prove the case of the complainant, the complainant himself was examined as PW1 and he deposed in support of his case in the complaint. Though he was cross examined at length, nothing was brought out to discredit his evidence, on the question of the revision petitioner borrowing the amount and executing and delivering of the cheque in discharge of the liability. He denied the suggestion that, the cheque given to the owner of the shop was mis-used and the present complaint was filed. She did not adduce any evidence to prove her case. She did not send any reply to the notice issued by the complainant when the dishonour of the cheque was intimated to her. So under the circumstances, the courts below were perfectly justified in relying on the evidence of PW1 and the presumptions CrI. R. P. No.1358 of 2014 6 available under Section 139 of the Act, convicting the revision petitioner for the offence under Section 138 of the Act and the concurrent findings of th court below on this aspect do not call for any interference.

8. As regards the sentence is concerned, the court below had sentenced the revision petitioner to undergo simple imprisonment for three months and also to pay a fine of 1,00,000/-, in default to undergo simple imprisonment for three months more. This was confirmed by the appellate court. It is settled law that, the cases under Section 138 of the Negotiable Instruments Act are basically of civil nature, but it has become a criminal offence, in order to make the drawer of the cheque to pay the amount to give credibility to the cheque issued in the business world by the customers and the intention of the legislature is not to send the

drawer of the cheque to jail, but give an opportunity to pay the amount as far as possible to collect the amount and pay the same to the complainant. In the decision reported in Damodar S. CrI. R. P. No.1358 of 2014 7 Prabhu v. Sayed Babalal H. [JT2010(4) (S.C.)457], the Hon'ble Supreme Court has held that, once a conviction is entered in offence under Section 138 of the Act, then the principle of payment of compensation should automatically followed. So considering this aspect, having imposed the cheque amount of 1,00,000/- as fine and directed the same to be paid to the complainant as compensation, this court feels that, the substantive sentence of three months simple imprisonment imposed by the courts below appears to be harsh and the same is liable to be set aside and reducing the imprisonment till rising of the court will be sufficient, while retaining the fine and direction to pay compensation out of fine will meet the ends of justice as well as both the parties are concerned. So the substantive sentence of three months imprisonment imposed by the courts below is set aside, while confirming the other part of the sentence and direction to pay compensation out of the fine amount and the sentence is modified as follows: CrI. R. P. No.1358 of 2014 8 Revision petitioner is sentenced to undergo imprisonment till rising of the court and also to pay a fine of 1,00,000/, in default to undergo simple imprisonment for three months. If the fine amount is realised, the same is directed to be paid to the complainant as compensation under Section 357(1)(b) of the Code of Criminal Procedure. If the revision petitioner pays the amount directly to the 3rd respondent and produces proof of payment of the same before the court below and also if the 3rd respondent appears and acknowledges the same before the court below, then it will be treated as substantial compliance of payment of compensation out of fine amount, as directed by the court below and confirmed by this court, then court below is directed to record the same in the respective register as provided in (2010(2) KLT1017 Beena v. Balakrishnan Nair and Another and (2012(4) KLT21 Sivankutty v. John Thomas and Another, and permit the revision petitioner to serve the substantive sentence of imprisonment, till CrI. R. P. No.1358 of 2014 9 rising of the court. Five months time is granted to the revision petitioner to pay the amount. So the revision petitioner is directed to pay the amount on or before 28.04.2015. With the above modification of the sentence alone, the revision petition is allowed in part. 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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