M.Ravindran. Vs. Mahendran.

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SooperKanoon Citation : sooperkanoon.com/912505

Court : Kerala

Decided On : Nov-30-2010

Judge : M.L. Joseph Francis, J.

Acts : Negotiable Instruments Act - Section 138, 118, 139; Code of Criminal Procedure (CrPC) - Section 255(1), 313

Appeal No. : CRL.A.No. 869 of 2003

Appellant : M.Ravindran.

Respondent : Mahendran.

Advocate for Def. : SRI.P.VIJAYA BHANU, Adv.

Advocate for Pet/Ap. : SRI.DILIP J. AKKARA, Adv.

Judgement :

1. This appeal is filed by the complainant in S.T.No. 3714 of 1999 on the file of the Judicial First Class Magistrate Court - I, Thrissur against the judgment of acquittal dt.14.1.2002. The first respondent herein was the accused in that case, which was filed by the complainant alleging commission of the offence under Section 138 of the N.I. Act.

2. The case of the complainant is briefly as follows. The first respondent had borrowed a sum of Rs.30,000/- from the appellant/complainant in the first week of June, 1996 for his business purposes, assuring that the amount will be repaid

within one year. However, after repeated demands he did not repay the amount. Thereafter the first respondent promised the appellant in May, 1997 that the amount will be paid within another year and issued a post dated cheque dt.3.6.1998 for Rs.30,000/- The appellant presented the cheque for collection, but the same was returned with a memo stating that payment was stopped by the drawer. The appellant sent a notice to the accused, which was replied by the first respondent stating false allegations.

3. In the Magistrate Court, on the side of the complainant, PW1 was examined and Exts.P1 to P9 were marked. On the side of the accused DW1 was examined and Exts.D1 to D8 were marked. The learned Magistrate, on considering the evidence, found that the complainant has failed to establish that the accused issued Ext.P1 cheque in discharge of a debt or legally enforceable liability and acquitted the accused under Section 255(1) Cr.P.C. Against that judgment of acquittal the complainant filed this appeal.

4. Heard learned counsel for the appellant and the learned counsel for the first respondent.

5. The learned counsel for the appellant submitted that the accused is not disputing his signature in Ext.P1 cheque and the complainant has proved all the necessary ingredients of the offence under Section 138 of the N.I. Act. The benefit of the presumption under Sections 118 and 139 of the N.I. Act is available to the complainant. The learned counsel for the appellant submitted that the only case of the accused was that he had an earlier transaction with one Madhusoodansn Nair, which was not proved by the accused. The learned counsel for the appellant submitted that the accused has no consistent case. The learned counsel for the first respondent supported the judgment of the court below.

6. When questioned under Section 313 Cr.P.C., the case of the accused is that he is conducting a computer centre at Palakadd since 1998. He was working as a Marketing Executive in Telecraft Movies Private Ltd. The complainant was the Manager of the office at Thrissur. One Devan Nair was also working as Marketing Executive in the office at Thrissur. In March 1995, the accused availed a loan of Rs.25,000/- from Madhusoodhaan Through Devan Nair. The condition was to pay

Rs.2,755/- per month for 12 moths. A Promissory Note and 12 post dated cheques were issued by the accused. One cheque was collected. Thereafter, the accused was directed to pay the amount in cash. After payment of the entire amount, the accused demanded back the cheques and Promissory Note, which were given as security. But they were not returned. It was stated that Madhusoodhanan was in possession of the cheque and promissory note. He was also told in 1997 that Madhusoodhanan has missed those documents. Accordingly, on 11.6.1997 the accused gave a stop payment instruction to the bank. The accused has stated that he does not owe any amount to the complainant.

7. The complainant was examined as PW1. He deposed that the accused borrowed Rs.30,000/- from him in June, 1996 and promised to repay the amount within one year and the accused issued a Promissory Note. When the accused failed to pay the amount and when PW1 repeatedly demanded the amount, the accused issued Ext.P1 cheque for Rs.30,000/- in May, 1997 and the Promissory Note was returned to the accused. PW1 deposed that when he presented the cheque for collection, it was returned with stop payment instruction as per Exts.P2 and P3 memo. The complainant sent a lawyer notice, which was accepted by the accused. But he did not repay any amount.

8. When the accused was examined as DW1, he stated that while he was working in Telecraft movies (P) Ltd. one Devan Nair was also working in that establishment. The accused borrowed Rs.25,000/- from Devan Nair and towards repayment of the said amount the accused had issued 12 blank cheques. One cheque for Rs.30,000/- was also given as security. Accused repaid the amount to Devan Nair but the cheque, which was given as security, was not returned. The name of the drawee was not mentioned in the cheque. When the accused demanded back the cheque, the complainant told him that he had received the amount from Valsan and he would get the cheque from Valsan. But the cheque was not returned. Therefore the accused gave stop payment instruction to the bank.

9. With regard to the documents produced from the side of the accused, the learned Magistrate dealt with the same as follows. Ext.D1 is the letter issued by

the accused to the bank dt.11.6.1997. It can be seen that the said letter was issued much earlier to the date of Ext.P1 cheque. In Ext.D1 letter addressed to the Manager of the bank, the accused has specified his case and has convincingly stated the reasons why he issued the stop payment instruction. Exts. D3 and D4 are two cancelled cheques. Ext.D5 the savings bank pass book and Ext.D6 is the cheque book issued in his name. The savings bank pass book and the cheque book along with the cancelled cheques will disclose that the case set up by the accused is true. The cancelled cheques are for Rs.2,725/ each. There also the drawee's name is not mentioned.. The pass book would reveal that a sum of Rs.2,725/- was collected by way of cheque by one Raveendran, who is the complainant. The case of the accused appears to be true, in view of the two letters written by the complainant. Ext.D7 is the letter dt. 4.3.1999, which refers to the filing of a case under Section 138 of the N.I. Act against one Sasi. Ext.D8 is the copy of the letter sent by the complainant to Sasi. In that letter the complainant refers to a loan dt.25.3.1995 for a sum of Rs.30,000/-

10. The learned Magistrate, on considering the evidence of both sides, arrived at a conclusion that the complainant has failed to establish that the accused issued Ext.P1 cheque in discharge of a debt or legally enforceable liability. Since that finding was arrived at by the learned Magistrate after properly considering the oral and documentary evidence, I find no reason to interfere with that finding.

11. Accordingly this appeal is dismissed, as it is without any merit.