

B.Suseela Vs. S.Govind

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Court : Chennai

Decided On : Jun-07-2012

Judge : S.Tamilvanan, J.

Acts : [Negotiable Instruments Act 1881](#) - Section 138 (b) (C), 142 (b); Code of Criminal Procedure(CrPC) - Section 397, 401

Appeal No. : CrI.R.C.(MD).No.373 of 2009

Appellant : B.Suseela

Respondent : S.Govind

Advocate for Def. : Mr.N.Balakrishnan, Adv.

Advocate for Pet/Ap. : Mr.P.Ganapathisubramanian, Adv.

Judgement :

Revision preferred under Sections 397 r/w 401 of the Criminal Procedure Code against the Judgment of Conviction and Sentence, dated 26.06.2009 made in C.A.No.7 of 2008 on the file of the Principal Sessions Judge, Pudukottai, confirming the Judgment of Conviction and Sentence, dated 25.02.2008 imposed in C.C.No.314 of 2006 on the file of the District Munsif-cum-Judicial Magistrate Court, Thirumayam.

ORDER

1. This criminal revision has been preferred against the Judgment, dated 26.06.2009 made in C.A.No.7 of 2008 on the file of the Principal Sessions Judge, Pudukottai, confirming the sentence of 3 months RI and to pay a fine of Rs.1,000/- with default sentence of one month SI imposed under Section 138 of Negotiable Instruments Act, by Judgment, dated 25.02.2008 in C.C.No.314 of 2006 on the file of the District Munsif-cum-Judicial Magistrate, Thirumayam.

2. It is seen that the case was taken on file on the complaint given by the respondent herein under Section 138 of Negotiable Instruments Act. After the trial, the learned Judicial Magistrate, Thirumayam found the petitioner / accused guilty for an offence punishable under Section 138 of Negotiable Instruments Act and accordingly, convicted and sentenced him to undergo three months RI and to pay a fine of Rs.1,000/- and in default to undergo 1 month SI. Aggrieved by which, appeal was preferred by the petitioner herein.

3. Learned Principal Sessions Judge, Pudukottai, having considered the evidence available on record and also the arguments advanced by both the learned counsel, in C.A.No.7 of 2008, has confirmed the conviction and sentence and dismissed the appeal preferred by the revision petitioner. Aggrieved by which, this criminal revision has been preferred by the petitioner / accused.

4. As per the case of the respondent / complainant, on 25.11.2005, the revision petitioner / accused herein had issued a cheque, dated 26.12.2005 for a sum of Rs.20,000/- in favour of the respondent for the amount received from him. When the cheque was presented for payment in the bank, the same was returned on the ground that there was no sufficient funds in the bank account of the revision petitioner / accused, subsequently, the respondent herein issued a legal notice. In spite of the receipt of the legal notice, the amount was not settled by the revision petitioner / accused, hence, the complaint was filed by the respondent herein under Section 138 of Negotiable Instruments Act against the Revision Petitioner.

5. It is seen that the respondent / complainant himself was examined before the learned Judicial Magistrate as P.W.1 and the dishonoured cheque, dated 26.12.2005 was marked as Ex.P.1. As per Ex.P.2, the memo, dated 27.12.2005 and the covering letter sent by ICICI Bank, Rayavaram Branch, the cheque was

returned due to insufficient funds in the bank account of the revision petitioner / accused. In the covering letter, the said reason is stated and as per the covering letter, the original of the cheque was returned to the respondent. Subsequently, legal notice was issued by the respondent / complainant and the same was received by the petitioner / accused, for which postal acknowledgment has been produced and marked as documents.

6. Learned counsel appearing for the revision petitioner submitted that the signature available in the postal acknowledgement, Ex.P.4 is not the signature of the revision petitioner / accused and the said signature does not tally with the signature available in Ex.P.1. Therefore, according to the learned counsel for the petitioner, there is no proper service of legal notice to the revision petitioner / accused to prosecute him under Section 138 of Negotiable Instruments Act.

7. In the grounds, the revision petitioner has stated that delay was condoned by the Court below, without providing reasonable opportunity to the revision petitioner and further stated that the cheque was issued by the revision petitioner / accused at the police station under threat and coercion. Since the husband of the revision petitioner was kept in the police station, under a compelling circumstance, the petitioner / accused has issued the cheque.

8. The petitioner / accused has not disputed that the cheque was issued by her and that was dishonoured due to insufficient funds in her bank account. The respondent / complainant, in support of his contention, produced the returned cheque for a sum of Rs.20,000/- with the memo issued by ICICI Bank, stating the reason that there was insufficient funds in the bank account, which resulted in returning the cheque, without honouring the same. The respondent / complainant has also produced the copy of the legal notice and the postal acknowledgement, which were Ex.P.3 and Ex.P.4 respectively.

9. Mr.P.Ganapathisubramanian, learned counsel appearing for the revision petitioner drew the attention of this Court to the decision, M.D.Thoman vs. P.S.Jaleel and another, reported in (2010) 3 MLJ (CrI) 556 (SC), wherein the Hon'ble Supreme Court has laid down a ratio that when there is no statutory compliance of service of notice in accordance with provisions as mandated under

Section 138 (b) of the Negotiable Instruments Act, 1881, conviction would not be sustainable. It cannot be disputed that there must be compliance of the mandate of sending legal notice in accordance with Section 138 (b) of Negotiable Instruments Act, 1881.

10. In the instant case, the respondent / complainant has specifically stated that legal notice was issued on the revision petitioner / accused. In support of his contention, he has produced a copy of the legal notice along with the postal acknowledgement. The Courts below have concurrently found that the legal notice was properly served on the revision petitioner / accused. In the aforesaid circumstances, the revision petitioner / accused cannot raise a defence before the revisional court on the factual aspect that the signature available in the postal acknowledgement is not the signature of the revision petitioner / accused. Hence, the aforesaid decision cited by the learned counsel appearing for the revision petitioner / accused is not applicable to the facts and circumstances of the case on hand.

11. In K.N.Kandasamy Gounder vs. P.Dhamodharan, reported in (2010) 1 MLJ (Cri) 211, this Court has held that when the mandatory requirement of service of notice, as contemplated under Section 138 (c) of the Act has not been complied with, no cause of action would arise.

12. As per Section 138 of Negotiable Instruments Act, without prejudice to any other provisions of the Act, penalty shall be imposed for dishonour of cheques due to insufficient funds on the person, for issuance of such cheque. However, the proviso contained in the Section would say the exceptional circumstances, under which such penalty could be imposed. Section 138 (c) of the Negotiable Instruments Act reads as follows :

the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

13. As per the findings of the Courts below, the legal notice, original of Ex.P.3 was received by the revision petitioner / accused under Ex.P.4, postal

acknowledgement, however, the amount was not settled even thereafter. In the aforesaid circumstances, the respondent / complainant was entitled to prefer complaint under Section 138 of Negotiable Instruments Act and that there is no bar under sub-section (c) of Section 138 of N.I.Act.

14. The decisions cited by the learned counsel appearing for the petitioner / accused is not relevant to the facts and circumstances of the case. Similarly, the petitioner / accused cannot challenge the interlocutory order passed under Section 142 (b) of the Negotiable Instruments Act in this revision. In this regard, the submissions made by the learned counsel appearing for the respondent / complainant that the petitioner / accused is not entitled to raise a new defence in the revision against the concurrent findings of the Courts below is acceptable.

15. As the respondent / complainant has established the claim beyond reasonable doubt under Section 138 of Negotiable Instruments Act, I could find no error or infirmity in the impugned Judgment rendered by the trial court in convicting the petitioner / accused under Section 138 of Negotiable Instruments Act and imposing sentence. However, it is seen that the Courts below have not awarded any compensation in favour of the respondent / complainant, in view of the dishonour of the cheque.

16. On the aforesaid circumstances, this criminal revision petition has to be dismissed, confirming the concurrent findings rendered by the Courts below. Learned counsel for the respondent / complainant has not disputed that awarding compensation to the respondent would be the proper remedy, apart from imposing sentence to the Revision petitioner / accused under Negotiable Instruments Act.

17. As the case relates to Section 138 of Negotiable Instruments Act, I find is just and reasonable, to confirm the conviction, however, in respect of the sentence, to meet the ends of justice, providing an option to the revision petitioner / accused to make payment of cheque amount, instead of undergoing imprisonment, conditional order is passed. Accordingly, the conviction is confirmed and in respect of sentence, hold that the revision petitioner / accused shall make payment of the cheque amount, Rs.20,000/- (Rupees twenty thousand only) to the respondent / complainant or deposit the said amount to the credit of the case in C.C.No.314 of

2006 on the file of the District Munsif- cum-Judicial Magistrate, Thirumayam on or before 06.07.2012, as an alternative for the sentence imposed by the Courts below.

18. If the cheque amount, Rs.20,000/- (Rupees Twenty Thousand) is not paid to the respondent or deposited into the trial court within the time limit specified, the petitioner / accused shall undergo the imprisonment as decided by the Court below and for which, the court below is directed to secure the presence of the revision petitioner / accused to undergo the remaining period of imprisonment.

With the above observation, this Criminal Revision Petition is dismissed.

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