

Gopinath Vs. Suresh

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Court : Kerala

Decided On : Jun-14-2011

Judge : V.K. Mohanan

Appeal No. : Crl.R.P.No.1451 of 2011

Appellant : Gopinath

Respondent : Suresh

Judgement :

1. The accused in a prosecution for the offence under S.138 of the Negotiable Instruments Act, 1881 (for short 'the NI Act') is the revision petitioner as he is aggrieved by the judgment of the Appellate Court since the appeal is disposed of without hearing him.

2. The case of the complainant that the revision petitioner had borrowed a sum of ` 55,000/- from the complainant and towards the discharge of the said liability, the accused issued a cheque for the said amount which when presented for encashment, was dishonoured as there was no sufficient fund in the account maintained by the accused and therefore, the accused has committed the offence punishable under S.138 of the NI Act. With the above allegation, the complainant approached the Judicial First Class Magistrate Court, Chittur by filing a complaint upon which cognizance was taken and instituted ST No. 2501 of 2007. During the trial of the above case, the complainant himself was examined as PW 1 and Ext.

P1 to P5 were produced. No evidence either documentary or oral is produced by the defence. Finally, based upon the available materials and evidence, the trial Court has found that the revision petitioner / accused is guilty under S.138 of the NI Act and accordingly, sentenced him to undergo simple imprisonment for a period of three months and also directed him to pay compensation for ` 60,000/- to the complainant under S.357(3) of the Cr PC and the default sentence is fixed as simple imprisonment for a period of one month. Aggrieved by the order of conviction and sentence and challenging the judgment of the Trial Court, the revision petitioner herein had preferred an appeal before the Sessions Court, but the Sessions Court by judgment dated 21/12/2010 in Crl. A No. 267 of 2009 dismissed the appeal confirming the conviction and sentence. It is the above conviction and sentence and judgments of the Courts below are challenged in this Crl. RP.

3. Learned counsel for the revision petitioner submitted that the Appellate Court dismissed the appeal confirming the conviction and sentence imposed by the trial Court without hearing the revision petitioner or his counsel and therefore, the judgment of the Appellate Court is liable to be set aside. Several other contentions are also taken by counsel for the petitioner, which according to me, need not be considered by this Court at this stage, especially since this Court is not inclined to consider the revision petition on merit, but to remand the matter back to the Appellate Court as the steps adopted by the Appellate Court while disposing of the appeal are not correct.

4. In paragraph 6 of the Appellate Court judgment, it is stated that when the above appeal came up for hearing, there was nobody to represent the appellant or to make arguments on behalf of the appellant and the complainant was also not heard. The Apex Court in the decision reported in *Md. Sukur Ali v. State of Assam*, 2011 (1) KHC 760 : 2011 (1) KLT 881 (SC) : 2011 (1) KLD 373 : 2011 (2) SCALE 730 : 2011 (4) SCC 729 : AIR 2011 SC 1222 has held that even in a case where the counsel for the accused does not appear either because of the counsel's negligence or deliberately, the Court should not decide such criminal case against the accused in the absence of his counsel, instead, the Court should appoint another counsel as *amicus curiae* to defend the accused. In the present case, it is

pertinent to note that the appeal was preferred through counsel engaged by the revision petitioner / accused. The appellate proceedings is the continuation of the trial and the convicted person will get an opportunity to get re - appreciated his evidence by a Superior Court and such convicted person will get an opportunity to advance his defence for the consideration of the very same superior Court. Therefore, according to me, the Appellate Court ought not have dismissed the appeal without hearing the petitioner or his counsel. Even if the counsel for the petitioner was absent, the Court ought to have appointed a counsel as amicus curiae or the counsel from the State Brief Panel, if any. In the light of the above decision and in the light of the decision cited supra, I am of the view that this revision petition can be disposed of remanding the matter back for fresh consideration of the Appellate Court.

5. In the result, the judgment dated 21/12/2010 in Crl A No. 267 of 2009 is set aside and the matter is remitted back to the Appellate Court for fresh consideration and to dispose of the appeal afresh after hearing the petitioner or his counsel as well as the first respondent / complainant or his counsel. Accordingly, the revision petitioner / accused is directed to appear before the Appellate Court on 15th July, 2011 on which date the learned Judge of the Appellate Court is directed to restore the appeal on file and to hear the matter as directed above in accordance with the procedure and law. Coercive steps, if any, pending against the petitioner shall be kept in abeyance till the disposal of the Criminal Appeal.

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