

Reghunathan Vs. State of Kerala, Represented by Public Prosecutor and Another

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Court : Kerala

Decided On : Jul-13-2011

Reported in : 2011(3)KLT493; 2011(3)KLJ438; 2011(3)ILR(Ker)807; 2011AIR(NOC)424; 2011(3)KHC354

Judge : S.S. Satheesachandran

Appeal No. : CRL.REV.PET.NO.1681 OF 2011

Appellant : Reghunathan

Respondent : State of Kerala, Represented by Public Prosecutor and Another

Judgement :

1. The revision is by the accused, who was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short “the Act”). Negating his plea of not guilty, the learned magistrate convicted him of such offence and sentenced him to undergo simple imprisonment for six months and to pay a compensation of Rs.2,05,000/- with default term to undergo simple imprisonment for a period of three months. In the appeal, the learned Sessions Judge confirmed the conviction, but modified the sentence limiting the substantive term of imprisonment to a day, till the rising of the court, retaining the compensation awarded with the default term. Feeling aggrieved he has preferred

this revision.

2. Notice given the 2nd respondent/complainant has entered appearance. I heard the counsel on both sides.

3. The learned counsel for the accused raised two fold challenges, firstly, against the sustainability of the conviction on the premise that the defence canvassed, that the cheque was not supported by consideration, was not duly considered by the courts below, and secondly, against the sentence, as it now stands, the default term of imprisonment provided for non-payment of the compensation, that it requires modification in view of the circumstances and events that had taken place after his conviction.

4. So far as the plea raised with respect to the challenge against the conviction on its merits, setting forth a case that the cheque involved was not supported by consideration, it is not disputed that in respect of the claim arising out of the cheque, a suit was filed by the respondent/complainant, and the decree passed in his favour against the accused, who was the defendant therein, upholding the plaintiff claim, has become final and conclusive. That being so, it is no longer open for the accused to set forth any challenge that the cheque involved was not supported by consideration, to assail the concurrent finding, negating such defence by the two inferior courts. It is the case of the accused that pursuant to the passing of the decree in the civil suit as aforementioned, in execution thereof for non-satisfaction of such decree, he had undergone detention for a period of 90 days in civil prison, and, such period should be considered and treated as imprisonment provided as default term for non-payment of the compensation in this case, to relieve him from undergoing the default term of imprisonment. The fact that the revision petitioner has undergone detention for non-satisfaction of the decree passed in a civil suit is conceded to by the complainant, who was the decree holder; but the question emerging for consideration is whether the detention in civil prison for non-satisfaction of the decree could be taken advantage of by the accused, to relieve him from the penal consequences flowing out of non-payment of the compensation, for the offence with which he was convicted and sentenced in this case. Sub-section (5) of Section 357 of the Code

of Criminal Procedure is pressed upon by the learned counsel for the accused to exercise discretion in his favour to relieve him from the default term of imprisonment imposed as part of the sentence.

5. Sub-section (5) of Section 357 of the Code reads thus:

“At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.”

A bare reading of the sub-section itself would indicate that the purport and object envisaged thereof would come into play when a decree claiming compensation is passed by a civil court subsequent to awarding of compensation by the criminal court over the same cause which entitled such person to make the claim in that suit. In any subsequent civil suit relating to the same matter, if compensation is claimed, the direction is that such court shall take into account any sum paid or recovered as compensation under Sub-section (1) or (3) of Section 357 of the Code of Criminal Procedure, Plea of the counsel is that, when civil court has granted such a decree the principle is vice versa applicable to the criminal court while awarding compensation with default term of imprisonment.

6. I cannot agree. Awarding of compensation under sub-section (1) of Section 357 of the Code, which applies to a case where fine is imposed and any sum thereof is to be paid to compensate any person, or compensation as such under sub-section(3) which does not form part of the fine, depends upon judicial discretion to be exercised by the magistrate, having regard to the totality of the facts involved and also the offence for which conviction was entered into. When awarding such compensation, if there was already decree passed by a court with respect to compensation over the same matter, necessarily, exercise of judicial discretion has to take into account the compensation awarded earlier. But that exercise of judicial discretion, is not liable to be interfered with, unless there is reason to hold that the party, in whose favour compensation is awarded is doubly benefited or enriched unfairly by a decree of compensation passed by a civil court.

7. IN the given facts of he case, the complainant has approached the criminal court to prosecute the accused for the offence emanating from the dishonour of the cheque issued by him, after complying with the statutory requirements; and on establishing his case, the accused was convicted and sentenced. He has also taken recourse to the civil court for a decree to recover the amount covered by the cheque amount. Even after taking execution of the decree, it continues to be a paper decree despite personal execution levied against the accused, by which he was detained in civil prison for a period of three months, with the decree holder remitting batta and other charges for his detention as such. His decree still remains unsatisfied. The fact that the accused has undergone civil detention, for non-satisfaction of the decree rendered by the civil court, cannot be taken advantage of by him, to relieve him from the default sentence for non-payment of the compensation, which necessarily has to be undergone as part of the sentence. Plea canvassed by the accused is only to be rejected.

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