

Amubee Vs. A. Kamaruddin

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Court : Chennai

Decided On : Oct-31-2012

Judge : C.S. Karnan

Appeal No. : Crl. R.C. No. 1633 of 2005

Appellant : Amubee

Respondent : A. Kamaruddin

Advocate for Pet/Ap. : For the Petitioner: M. Devaraj, Advocate. For the Respondents: No Appearance.

Judgement :

(Prayer: Criminal Revision is filed under Sections 397 and 401 of Cr.P.C., to call for the records in C.A.No.301 of 2005, on the file of the Additional District and Sessions Judge and Presiding Officer Special Court for EC Act cases, Coimbatore dated 13.12.2005 confirming the order of conviction passed in C.C.No.344 of 2003, on the file of Judicial Magistrate-V, Coimbatore dated 16.06.2005 set-aside the same.)

1. The revision petitioner / appellant / accused has preferred the present revision in Crl.R.C.No.1633 of 2005 against the judgment made in C.A.No.301 of 2005, on the file of the Additional District and Sessions Judge and Presiding Officer Special Court for EC Act cases, Coimbatore, confirming the order passed by the learned Judicial Magistrate-V, Coimbatore in C.C.No.344 of 2003, convicting the petitioner

under Section 138 of Negotiable Instruments Act and imposing a sentence of six months imprisonment and a fine of Rs.4,000/- in default to undergo two months simple imprisonment.

2. The respondent / complainant's case is as follows:-

The accused approached the complainant for financial assistance to get a gas agency under Kargil Heroes Welfare Scheme, which should be allotted to her and promised the complainant that she would transfer the gas agency in his name. She induced the complainant to believe that she would be getting the gas agency and in consideration of such transfer of the agency, she demanded a sum of Rs.4,00,000/-. The complainant paid her Rs.4,00,000/- in October 1999. But the accused was not able to get the gas agency. On demand made by the complainant, the accused, in order to discharge the said loan, had issued two post dated cheques bearing Nos.236390 and 236391, drawn on State Bank of India, Coonoor dated 04.09.2002 and 11.09.2002, for Rs.2,00,000/- each, to and in favour of the complainant and had also given a letter of undertaking dated 03.05.2002. When the complainant presented the first cheque for collection with his bankers, viz., Tamil Nadu Mercantile Bank, Perur Main Road, Coimbatore on 04.09.2002, it was returned unpaid with an endorsement of "insufficient funds" in the account of the accused. Subsequently, on request made by the accused, when the complainant re-presented the cheque (bearing No.236390) with his bankers on 11.02.2003, it was once again returned unpaid with an endorsement of "insufficient funds" in the account of accused; and the complainant was intimated of return of cheque on 17.02.2003. The complainant sent a legal notice to the accused on 01.03.2003 which was returned un-served on 11.03.2002 with an endorsement of "intimation given, not claimed". Hence, the complainant has filed a complaint against the accused for an offence under Section 138 of Negotiable Instruments Act before the Judicial Magistrate-V, Coimbatore.

3. On being questioned, the accused pleaded not guilty and hence trial was conducted. On the complainant's side, two witnesses were examined and eight documents were marked as Exs.P1 to P8, viz., Ex.P1-letter of undertaking dated 03.05.2002 given by accused, Ex.P2-cheque dated 04.09.2002, Ex.P3-return

memo dated 14.02.2003, Ex.P4-debit advice dated 17.02.2003, Ex.P5-lawyer's notice dated 01.03.2003, Ex.P6-returned cover, Ex.P7-bank account statement of the accused, Ex.P8-letter sent by Indian Oil Corporation Limited dated 29.12.1999 to the accused. On the side of the accused, one witness was examined and eleven documents were marked as Exs.R1 to R11.

4. P.W.1, the complainant had adduced evidence which is corroborative of the statements made in the complaint and in support of his evidence, he had marked the exhibits listed as Exs.P1 to P8.

5. P.W.2., Balasubramanian, the Deputy Manager of State Bank of India, Coonoor Branch adduced evidence that the accused had a savings account in their bank and that the cheque leaf marked as Ex.P2 had been issued by their bank to the accused. He deposed that when the said cheque (Ex.P2) came for collection at their bank on 06.09.2002 and again on 14.02.2003, it was returned unpaid with an endorsement of "stop payment". He deposed that when the cheque (Ex.P2) was presented for collection on 14.02.2003, the balance in the account of accused was Rs.2,168.27/-. In support of his evidence, he had marked the copy of the bank account statement of accused as Ex.P7.

6. R.W.1, the husband of the accused had adduced evidence that at the time of death of the accused's son, the complainant had advanced a loan of Rs.4,100/-. Subsequently, When the accused was alone at the house, the complainant had come along with a woman and 9 other persons and had asked the accused to give a receipt for Rs.4,000/-. R.W.1 deposed that as his wife did not know how to read or write, she had just affixed her signature in a blank stamped paper and given it to the complainant, and had also stolen two cheque leaves. R.W.1 deposed that the complainant had not advanced any loan to the accused. In support of his evidence, he had marked Ex.R1, the passbook showing credit of Rs.7,50,000/- into the account of accused on 04.10.1999, Ex.R2-the copy of document showing payment of Rs.25,000/- given by Jain Trust, Ex.R3-the copy of document given by Tamil Nadu Congress Committee for payment of Rs.25,000/-, Ex.R4-copy of document showing payment made by Dravida Munnetra Kazhagam, Ex.R5-the copy of document showing payment made by DAV School, Ex.R6-the copy of

document showing payment made by welfare trust for prevention of child labour, Ex.R7-the copy of document showing payment by Army Headquarters Insurance Firm, Ex.R8-copy of document showing payment made by extra charitable trust, Ex.R9-copy of document showing payment made by Tamil Film Producers Council, Ex.R10-copy of document showing payment made by RYA Madras Trust, Ex.R11-document showing terminal benefits made by Madras regiments.

7. It was contended on the side of the accused that the undertaking letter marked as Ex.P1 had not been written by the accused and that the blank signed paper, which the accused had given to the complainant had been misused by him. It is seen on scrutiny of undertaking letter that the letter had been issued on 03.05.2002. It is seen from evidence of P.W.2, that the accused had instructed their bank on 04.05.2002 not to make payment for the said cheque marked as Ex.P2. The learned Magistrate opined that if the accused had really given the said Ex.P1, as a blank signed document as receipt for payment of Rs.4000/- received by her, it would not have been possible for her to send instructions to her bank to stop payment of cheque, after mentioning the cheque number of Ex.P2, the next day itself. As such, the learned Magistrate on scrutiny of Ex.P1 and evidence of P.W.2 opined that the accused had purposely given the stop payment advice to her bankers after being fully aware of the contents marked in Ex.P1 and as such rejected the contention of the accused that Ex.P1 had been received by the complainant from the accused by fraudulent means.

8. It had been contended on the side of the accused that the accused had received monetary benefits from the central and state government and other private bodies for the death of her son, and as such it was not necessary for the accused to borrow a loan of Rs.4,00,000/- from the complainant. It is seen on scrutiny of documents marked as Exs.R1 to R11 that the accused had received a total amount of Rs.30,00,000/- from various government and private sources for the death of her son in the Kargil War. However, the learned Magistrate observed that this proof of receipt of money cannot offset the fact that the cheque as per Ex.P2 issued by the accused had been dishonoured on presentation. From scrutiny of Ex.R11, the letter sent by the Army Authorities to the accused, it is seen that the accused is not eligible to get benefits of being given a gas agency

under the relevant scheme. Hence, the learned Magistrate opined that the dispute between the complainant and accused had only arisen after receipt of the above letter marked as Ex.R11. Though it had been contended on the side of the accused that the cheques had been stolen by the complainant, it is seen that the accused had neither filed a police complaint nor issued a notice to the complainant instructing him not to use the said cheques and had not let in any evidence in this aspect. Hence, the learned Magistrate, on considering the oral and documentary evidence, held the accused guilty of offence under Section 138 of Negotiable Instruments Act and sentenced the accused to undergo simple imprisonment for six months and imposed a fine of Rs.4,000/- in default of payment of fine, the accused was to undergo further period of simple imprisonment for two months.

9. Aggrieved by the conviction and sentence imposed by the trial Court, the accused had preferred an appeal in C.A.No.301 of 2005, before the Additional District and Sessions Judge and Presiding Officer Special Court for EC Act cases, Coimbatore and the respondent / complainant had also preferred a revision in C.R.P.No.105 of 2005 for enhancement of sentence and for compensation instead of fine. The learned judge, on scrutiny of evidence of R.W.1 observed that the accused applied for gas agency initially in the name of her daughter Amin Meharunnisa to the Ministry of Defence, Government of India, and the same was rejected by the authority. In order to apply for the purpose, the said Amin Meharunnisa entered into an agreement with one Krishnasamy and Ponnusamy of Annur on 24.09.1999 and also paid Rs.15,000/- as advance. The said Amin Meharunnisa has also entered into an agreement of lease with the complainant's wife for running a gas agency in a portion of a house at Annur. It is also clear that steps taken by R.W.1 did not materialise and for that purpose, he had gone to Delhi on several occasions. When their endeavor to obtain the gas agency in the name of the daughter failed, attempts were made to obtain the agency in the name of the accused and for that the services of the complainant were utilized by the accused and R.W.1. The learned judge also observed that the accused, being aware that the running of a gas agency is a full time job and that it was not possible for her to run the same at Coonoor had sought for the gas agency at Annur, so that the accused could transfer the gas agency in favour of the complainant. Hence, the learned Judge opined that the cheque in question was

issued for the purpose of getting the gas agency and that it was issued for a legally enforceable debt. Hence, the learned judge on scrutiny of the oral and documentary evidence dismissed the appeal and criminal revision and confirmed the order of the trial Court.

10. Aggrieved by the dismissal of her appeal, the appellant / accused has preferred the present revision.

11. The learned counsel for the revision petitioner has contended that the Courts below failed to note under what circumstances Ex.P1 and Ex.P2 were obtained as admitted by the complainant in the cross-examination and this would clearly show that the said exhibits were not issued for a valid consideration and legally enforceable liability. It was also pointed out that the Courts below failed to note that the lawyer's notice Ex.P5 was not served on the petitioner. It was also pointed out that the complainant in his evidence had contradicted the version of giving the amount. It was pointed out that the complainant, in his complaint, had stated that the sum of Rs.4,00,000/- was paid for transferring the gas agency whereas in the evidence, it was said that the amount was given on two occasions. It was also pointed out that the Courts below failed to note that there was no need for the petitioner to obtain money at the said point of time, since there was plenty of money available with the petitioner. It was contended that during the cross-examination of P.W.1, he had clearly admitted that the amount was paid only to R.W.1 and that R.W.1 has also deposed that the complainant and petitioner are not known to each other. It was also pointed out that only R.W.1 knows the complainant and had transactions with him and as such, the complaint against the petitioner is not maintainable. The learned counsel further submitted that if the Government granted an agency in favour of accused, the same could not be transferred in favour of the complainant as per conditions of the said licence. Therefore, the transaction is not valid under law. As such, the complaint filed against the accused is not maintainable.

12. On verifying the facts and circumstances of the case and arguments advanced by the learned counsel for the revision petitioner, and on perusing the impugned judgments of the Courts below, this Court does not find any discrepancy in the

conclusions arrived at for convicting the accused. However, the complainant had proved his case against the accused. Therefore, he is entitled to receive compensation from the accused. As such, this Court directs the accused to pay compensation of a sum of Rs.1,00,000/- (Rupees One Lakh only) as it is found to be appropriate. However, the sentence of simple imprisonment of six months imposed on the accused is on the higher side. Therefore, this Court reduces the sentence from six months simple imprisonment to two months simple imprisonment, as it is found to be appropriate in the instant case. The accused has to either pay the said compensation amount or to undergo two months simple imprisonment. This Court directs the learned Judicial Magistrate-V, Coimbatore, to issue bailable warrant and secure the accused into judicial custody forthwith, in order to undergo two months simple imprisonment. If the accused remits the said compensation amount of a sum of Rs.1,00,000/- into the credit of C.C.No.344 of 2003, on the file of Judicial Magistrate-V, Coimbatore before being remanded into judicial custody, the accused would be set at liberty and the sentence of simple imprisonment of two months imposed on the accused would not be operated upon any further. If the accused deposits the said amount, it is open to the complainant to withdraw the same after filing a Memo before the trial Court. If the accused pays the compensation amount, the fine amount of a sum of Rs.4,000/- is to be refunded to her. This order has been passed by this Court after invoking the discretionary power vested with it.

13. Resultantly, the above revision is partly allowed with the above modifications. Consequently, the conviction and judgment passed in C.A.No.301 of 2005, on the file of the Additional District and Sessions Judge and Presiding Officer Special Court for EC Act cases, Coimbatore dated 13.12.2005, confirming the judgment made in C.C.No.344 of 2003, on the file of Judicial Magistrate-V, Coimbatore dated 16.06.2005 is modified. Accordingly ordered.

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