Shijo Joseph Vs M/S.Poly Guards Equipments And Tools Private Ltd

Court: High Court Of Kerala

Date of Decision: Sept. 29, 2022

Acts Referred: Code of Criminal Procedure, 1973 â€" Section 313(1)(b), 357(1)(b), 397, 401
Negotiable Instruments Act, 1881 â€" Stion 20, 87, 118, 138, 139

Hon'ble Judges: A. Badharudeen, J

Bench: Single Bench

Advocate: T.Madhu, C.R.Saradamani, P.O.Thomas, Shahid Azeez, Reshma Santhosh, Renjish S. Menon, T.R.Ranjith

Final Decision: Dismissed

Judgement

A. Badharudeen, J.

1. The sole accused in S.T.No.5212/2014 on the file of the Judicial First Class Magistrate Court, Kolenchery, who was convicted and sentenced as

per judgment dated 04.01.2020, is the revision petitioner herein. He is aggrieved by the judgment of the Judicial First Class Magistrate Court,

Kolencherry and the judgment in Crl.Appeal No.63/2020 on the file of the Additional Sessions Court, Muvattupuzha dated 12.08.2022 arising out of

the same. The respondents herein are the complainant as well as the State of Kerala.

2. Parties in this Revision Petition will be referred as `complainant' and `accused' for convenience.

3. Heard the learned counsel for the revision petitioner as well as the learned Public Prosecutor during admission. Notice to the 1st respondent is

dispensed with.

4. In this matter, the 1st respondent herein, the original complainant, launched prosecution alleging commission of offence under Section 138 of the

Negotiable Instruments Act consequent to dishonour of cheque dated 15.07.2014 for Rs.13,60,684/- issued by the revision petitioner/accused towards

the amount collected by him from the dealers of the complainant till July, 2015.

5. The learned Magistrate took cognizance of the matter and after securing the presence of the accused, tried the matter. During trial, PWs 1 to 3

were examined and Exts.P1 to P12 were marked on the side of the complainant and after questioning the accused under Section 313(1)(b) of Cr.P.C,

DWs 1 and 2 and Exts.D1 to D7 series were marked on the side of the accused. The learned Magistrate apprised the evidence and found that Ext.P2

cheque was issued to discharge the liability to the tune of Rs.13,60,684/-, ie., Rs.4,14,159/- and Rs.9,46,525/- collected by the accused from 156 (45 +

116) shops, as authorised by the company. Though evidence of DW1 and DW2 and Exts.D1 to D7 series were adduced from the side of the accused,

the trial court held that relying on the above evidence, the accused was not successful in creating any dubiousness in the case of the complainant.

Thus the trial court found that the accused herein committed offence punishable under Section 138 of the N.I Act. He was sentenced to undergo

simple imprisonment for a period of 4 months and to pay fine of Rs.13,60,684/-. Fine was ordered to be paid as compensation to the complainant under

Section 357(1)(b) of Cr.P.C.

6. In the appeal filed challenging the verdict of the trial court, the learned Sessions Judge re-appreciated the evidence after apprising the contentions

raised by the accused and it was found that there is no reason to interfere with the finding of the trial court in the matter of conviction. But the

Sessions Judge modified the sentence to imprisonment till rising of court and to pay fine of Rs.13,60,684/-.

7. While arguing before this Court, the learned counsel for the revision petitioner/accused contended that Ext.P1, the extract of the resolution taken by

the Directors of the company in the meeting held on 30.08.2014, there was no seal and therefore there is no proper authorisation in favour of PW1 to

conduct the case. Therefore, the entire prosecution case is non-est.

8. The appellate court appraised this contention, but found in the negative.

9. While pointing out the anomaly in Ext.P1 it is submitted by the learned counsel for the revision petitioner that there is no seal in Ext.P1 and

therefore the same cannot be accepted. The learned counsel placed a copy of Ext.P1 for perusal of this Court to buttress this contention. But in the

copy produced by him seal seen affixed as Ã¢â‚¬Å“Poly Guards Equipments and Tools Pvt. Ltd., Kizhakka mbalamÃ¢â‚¬ and thus prima facie this contention

cannot be appreciated. In this case as per Ext.P1, the company authorised PW1 Baby O.J to conduct the case. Both courts below negatived the

contention as the same was found to be not sustainable.

10. Since copy of Ext.P1 produced before this Court itself would go to show the name of the company in the seal of the company, as espoused, the

contention as suggested cannot be sustained.

11. On appreciation of the evidence, the trial court convicted and sentenced the accused to undergo simple imprisonment for a period of 4 months and

to pay fine of Rs.13,60,684/- to the complainant, which was ordered to be paid as compensation under Section 357(1)(b) of Cr.P.C and in default of

payment of compensation, to undergo simple imprisonment for a period of three months. On appeal, the learned Sessions Judge also confirmed the

said conviction and sentence on re-appreciation of the evidence.

12. Though the learned counsel for the revision petitioner argued to unsettle the concurrent verdicts entered into by the trial court as well as the

appellate court, finally he conceded that the revision petitioner/accused will be satisfied with grant of 8 months' time to pay the compensation.

13. It is the settled law that power of revision available to this Court under Section 401 of Cr.P.C r/w Section 397 is not wide and exhaustive to re-

appreciate the evidence to have a contra finding. In the decision reported in [(1999) 2 SCC 452 : 1999 SCC (Cri) 275], State of Kerala v. Puttumana

Illath Jathavedan Namboodiri, the Apex Court, while considering the scope of the revisional jurisdiction of the High Court, laid down the following

principles (SCC pp. 454-55, para 5):

Ã¢â‚¬Å“5. Ã¢â‚¬Â¦... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the

correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court

for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second

appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the

same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the

notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the

aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the

respondent by reappreciating the oral evidence. ...Ã¢â‚¬â€‹

14. In another decision reported in [(2015) 3 SCC 123 : (2015) 2 SCC (Cri) 19]S, anjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke ,the

Apex Court held that the High Court in exercise of revisional jurisdiction shall not interfere with the order of the Magistrate unless it is perverse or

wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is

possible. Following has been laid down in para.14 (SCC p.135) :

Ã¢â‚¬Å“14. Ã¢â‚¬Â¦... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any

relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is

possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to

do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 Cr.P.C is not to be equated

with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous

or glaring unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised

arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.Ã¢â‚¬â€‹

15. The said ratio has been followed in a latest decision of the Supreme Court reported in [(2018) 8 SCC 165], Kishan Rao v. Shankargouda. Thus the

law is clear on the point that the whole purpose of the revisional jurisdiction is to preserve power in the court to do justice in accordance with the

principles of criminal jurisprudence and, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own

conclusion on the same when the evidence had already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring

feature is brought to the notice of the court which would otherwise tantamount to gross miscarriage of justice.

16. In this connection, I would like to refer a 3 Bench decision of the Apex Court in [2010 (2) KLT 682 (SC)],R angappa v. Mohan. In the above

decision, the Apex Court considered the presumption available to a complainant in a prosecution under Section 138 of the N.I Act and held as under:

Ã¢â‚¬Å“The presumption mandated by S.139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned

observations in Krishna Janardhan Bhat [2008 (1) KLT 425 (SC)] may not be correct. This is of course in the nature of a rebuttable presumption and it is open to

the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an

initial presumption which favours the complainant. S.139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative

objective of improving the credibility of negotiable instruments. While S.138 of the Act specified a strong criminal remedy in relation to the dishonour of cheques,

the rebuttable presumption under S.139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made

punishable by S.138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is

usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and

interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard or proof. In the absence of compelling

justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an

accused has to rebut the presumption under S.139, the standard of proof for doing so is that of `preponderance of probabilities'. Therefore, if the accused is able

to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. Accused can rely on the

materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of

his/her own.Ã¢â‚¬‹

17. In the decision reported in [2019 (1) KLT 598 (SC) : 2019 (1) KHC 774 : (2019) 4 SCC 197 : 2019 (1) KLD 420 : 2019 (2) KLJ 205 : AIR 2019

SC 2446 : 2019 CriLJ 3227],B ir Singh v. Mukesh Kumar, the Apex Court while dealing with a case where the accused has a contention that the

cheque issued was a blank cheque, it was held as under:

Ã¢â‚¬Å“A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person

who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for

payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly

signed by the drawer. If the cheque is otherwise valid, the penal provisions of S.138 would be attracted. If a signed blank cheque is voluntarily presented to a

payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on

the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.Ã¢â‚¬‹

18. In a latest 3 Bench decision of the Apex Court reported in [2021 (2) KHC 517 : 2021 KHC OnLine 6063 : 2021 (1) KLD 527 : 2021 (2) SCALE

434 : ILR 2021 (1) Ker. 855 : 2021 (5) SCC 283 : 2021 (1) KLT OnLine 1132],K alamani Tex (M/s.) & anr. v. P.Balasubramanian the Apex Court

considered the amplitude of presumptions under Sections 118 and 139 of the N.I Act it was held as under:

Ã¢â‚¬Å“Adverting to the case in hand, we find on a plain reading of its judgment that the Trial Court completely overlooked the provisions and failed to appreciate

the statutory presumption drawn under S.118 and S.139 of NIA. The Statute mandates that once the signature(s) of an accused on the cheque/negotiable

instrument are established, then these `reverse onus' clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the

presumption imposed upon him. Once the 2nd Appellant had admitted his signatures on the cheque and the Deed, the Trial Court ought to have presumed that the

cheque was issued as consideration for a legally enforceable debt. The Trial Court fell in error when it called upon the Complainant-Respondent to explain the

circumstances under which the appellants were liable to pay.

Ã¢â‚¬Â¦.....

18. Even if we take the arguments raised by the appellants at face value that only a blank cheque and signed blank stamp papers were given to the respondent,

yet the statutory presumption cannot be obliterated. It is useful to cite Bir Singh v. Mukesh Kumar (2019 (1) KHC 774 : (2019) 4 SCC 197 : 2019 (1) KLD 420 :

2019 (1) KLT 598 : 2019 (2) KLJ 205 : AIR 2019 SC 2446 : 2019 CriLJ 3227], P.36., where this Court held that:

Ã¢â‚¬Å“Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under S.139 of the

Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.Ã¢â‚¬â€‹

19. Thus the law is clear on the point that when the complainant discharged the initial burden to prove the transaction led to execution of the cheque,

the presumption under Sections 118 and 139 of the N.I Act would come into play. No doubt, these presumptions are rebuttable and it is the duty of the

accused to rebut the presumptions and the standard of proof of rebuttal is nothing but preponderance of probabilities.

20. It has been settled in law that the accused can either adduce independent evidence or rely on the evidence tendered by the complainant to rebut

the presumptions.

21. In this matter, the evidence of PWs 1 to 3 and Exts.P1 to P12 were given emphasis by the trial court to point out that the accused issued Ext.P2

cheque for valid consideration. Thus it was found that the initial burden cast upon the complainant in the matter of transaction and execution stands

proved and therefore, both the courts given benefit of presumption under Sections 118 and 139 of the N.I Act in favour of the complainant on the

finding that the evidence adduced by the accused/revision petitioner is insufficient to rebut the presumptions.

22. Thus there is no reason to interfere with the concurrent verdicts entered into by the trial court as well as the appellate court. Similarly the appellate

court rightly modified the substantive sentence to the minimum sentence of imprisonment till rising of the court and to pay fine of Rs.13,60,684/- as

compensation under Section 357(1)(b) Cr.P.C and in default of payment of the fine, to undergo simple imprisonment for three months. Therefore, the

sentence also does not require any interference at the hands of this Court.

Accordingly, the Revision Petition is dismissed, while granting six months' time to the revision petitioner to undergo the sentence imposed by the

appellate court. Therefore, the execution of sentence shall stand deferred till 28.03.2023. The revision petitioner shall appear before the trial court on

29.03.2022 to undergo the modified sentence and to pay the fine.