P.Gopi Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Jan. 14, 2025

Acts Referred: Code of Criminal Procedure, 1973 â€" Section 397, 401
Negotiable Instruments Act, 1881 â€" Section 138, 139

Hon'ble Judges: G.Girish, J

Bench: Single Bench

Advocate: G.P.Shinod, K.K.Dheerendrakrishnan, N.P.Asha, Sangeetharaj N.R

Final Decision: Dismissed

Judgement

G.Girish, J

1. The revision petitioner is the accused in C.C.No.539/2001 on the files of the Judicial First Class Magistrate Court-III, Neyyattinkara, a case

instituted by the second respondent herein alleging the commission of offence under Section 138 of the Negotiable Instruments Act. The Trial Court

convicted and sentenced the petitioner to undergo simple imprisonment for three months and to pay a compensation of 90,000/- to the second

respondent. In the appeal, the Additional Sessions Fast Track Court-IV, Thiruvananthapuram confirmed the conviction and reduced the imprisonment

awarded to imprisonment till the rising of the Court while retaining the direction to pay compensation as such. Aggrieved by the above judgment dated

31.01.2012 in Crl.A.No.649/2010, the petitioner is here before this Court with this revision.

Ã, 2. Heard the learned counsel for the revision petitioner, the learned counsel for the second respondent and the learned Public Prosecutor

representing the first respondent.

3. The Trial Court relied on the testimony of the second respondent as PW1 and seven documents which were marked as Exts.P1 to P7 for arriving

at the finding that the petitioner is guilty of commission of offence under Section 138 of the Negotiable Instruments Act. The evidence adduced by the

petitioner and two witnesses as DW1 to DW3 and the documents marked as Exts.D1 series, D2 and D3 were found by the Trial Court to be

insufficient to unsettle the presumption under Section 139 of the Negotiable Instruments Act which the complainant established through his evidence.

It is, in fact, during the second spell of trial that the Trial Court rendered the judgment dated 26.07.2010 convicting and sentencing the revision

petitioner herein. Earlier, the revision petitioner was convicted and sentenced by the Trial Court, but the above conviction and sentence were set aside

by the Sessions Court, Thiruvananthapuram as per the judgment dated 17.04.2008 in Crl.A.No.314/2007, and the matter was remanded back to the

learned Magistrate with a direction to give opportunity to the accused to send Ext.D1 series and Ext.D2 for expert opinion and to permit further

evidence. After the remand of the case, the documents marked as Exts.D1 series and D2, along with specimen handwritings of the complainant, were

sent to the Forensic Science Laboratory, Thiruvananthapuram for the comparison of handwritings. After getting Ext.D3 report of the expert, and the

examination of the Assistant Director of FSL, Thiruvananthapuram as DW3, the learned Magistrate again evaluated the evidence and arrived at the

finding against the revision petitioner.

Ã, 4. The contention of the revision petitioner is that he used to purchase textile items from the second respondent on credit basis after handing over

signed blank cheques, and that there arose an altercation with the second respondent in connection with some damaged textile items supplied to the

revision petitioner. Ext.P1 cheque is said to have been manipulated and misused by the second respondent due to the above grudge with the revision

petitioner. According to the revision petitioner, the amount which he actually owed the second respondent in connection with the damaged textile items

supplied, was only Rs.28,000/-, but the second respondent filled up the signed blank cheque incorporating the amount as Rs.90,000/- and presented it

for collection. Exts.D1 series are the receipts said to have been issued by the second respondent to the petitioner in connection with the sale

transactions of textile items. Ext.D2 is said to be another receipt issued to DW2 by the second respondent in connection with the sale of textile items.

The second respondent, though he admitted that he was having textile business, strongly disputed the issuance of Exts.D1 series and Ext.D2. It is

under the above circumstances that the petitioner made an attempt to establish the handwriting in Exts.D1 series and Ext.D2 as that of the second

respondent by analysing the above documents at the Forensic Science Laboratory, Thiruvananthapuram. However, DW3, the expert who conducted

the analysis of documents, issued Ext.D3 report stating that in the absence of documents containing the admitted handwritings of the second

respondent, it was not possible to give an opinion that the handwritings in Exts.D1 series and Ext.D2 were that of the said person who wrote the

specimen handwritings. Thus, as matter stands now, the petitioner is not in a position to show that Exts.D1 series were issued by the second

respondent at the time when he purchased textile items from the second respondent. It is also pertinent to note that Exts.D1 series do not contain the

signature or seal of the second respondent. Furthermore, the registration number of the shop mentioned in Exts.D1 series is different from the

registration number stated by the second respondent in his testimony as PW1 during cross-examination.

5. It is relevant to note that even if Exts.D1 series and Ext.D2 are considered to have been issued by the second respondent, the only circumstance

which the petitioner could bring out is that the second respondent attempted to hide his transactions of sale of textile items to the petitioner, which at

the most could be canvassed as a conduct which would render the trustworthiness of the evidence of the complainant doubtful. By no stretch of

imagination, it could be said that Exts.D1 series and Ext.D2 would establish the defence put forward by the petitioner that the second respondent had

manipulated his signed blank cheque by incorporating the amount as Rs.90,000/- and got it dishonoured to wreak vengeance upon him. The evidence

adduced by the petitioner before the Trial Court was totally insufficient to establish his contention in the above regard. It is pertinent to note that as per

the law laid down by the Apex Court in Bir Singh v. Mukesh Kumar [(2019) 4 SCC 197] even a signed blank cheque leaf voluntarily handed over by

the accused towards some payment, would attract presumption under Section 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. In Sripati Singh through his son Gaurav Singh v. State of Jharkhand and

Another [AIR 2021 SC 5732] the Apex Court held that a cheque issued as security pursuant to a financial transaction cannot be considered as a

worthless piece of paper under every circumstance. It is further observed in the said decision that when a cheque is issued and treated as security

towards payment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as security

cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Thus, the contention

of the petitioner that Ext.P1 cheque suffers invalidity as one issued by him at the time when he purchased textile items from the second respondent on

credit basis, cannot be a ground to assail the criminal prosecution instituted by the second respondent against him. There is absolutely no patent

illegality, irregularity or perversity in the findings of the Trial Court that the petitioner committed the offence under Section 138 of the Negotiable

Instruments Act. The re-appreciation of evidence made by the Appellate Court, also does not suffer from any material defect. The proposition of law

upon the scope of interference in revision, is well settled by a catena of decisions of the Hon'ble Supreme Court.

6. In State of Kerala v. Jathadevan Namboodiri : AIR 1999 SC 981, the Hon'ble Supreme Court held as follows:

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 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.

Ã, 7. In Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke & Anr : 2015 (3) SCC 123, it has been held by the Hon'ble Supreme Court as

follows:

Revisional power of the court under Sections 397 to 401 of Cr.PC 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 glaringly 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, 8. Referring the above dictums, the Apex Court has observed in Kishan Rao v. Shankargouda : 2018 (8) SCC 165 as follows:

Another judgment which has also been referred to and relied by the High Court is the judgment of this Court in Sanjaysinh Ramrao Chavan vs. Dattatray

Gulabrao Phalke and others, 2015 (3) SCC 123. This 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 paragraph 14:

Ã¢â‚¬Å“14.....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 CrPC 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 glaringly 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€‹

9. In the light of the above discussion, I find no reason to interfere with the judgment rendered by the Appellate Court confirming the conviction and

modifying the sentence awarded by the Trial Court.

Resultantly, the petition is hereby dismissed.