

Sukanya Kuries and Loans Vs C.J. Varghese and State of Kerala

Court: High Court Of Kerala

Date of Decision: Sept. 29, 2009

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313, 357(1)
Negotiable Instruments Act, 1881 (NI) â€” Section 138

Hon'ble Judges: V. Ramkumar, J

Bench: Single Bench

Advocate: P.V. Chandra Mohan, for the Appellant; P.K. Aboobacker (Edathala), for the Respondent

Judgement

V. Ramkumar, J.
Heard both sides.

2. The appellant who was the complainant in S.T. No. 960 of 1999 on the file of the Chief Judicial Magistrate, Thrissur, challenges the order of

acquittal dated 29.03.2003 passed by the said Magistrate.

3. The case of the appellant in the private complaint filed u/s 138 of the Negotiable Instruments Act, 1881 is as follows:

Towards the amount due in a kuri transaction, the accused issued Ext.P2 cheque dated 16.03.1999 drawn on his account with the MO branch of

the Catholic Syrian Bank, Thrissur. The cheque when presented for collection through the bank of the complainant, was dishonoured as evidenced

by Ext.P3 dishonour memo dated 19.03.1999. The complainant issued Ext.P4 statutory notice dated 03.04.1999 as evidenced by Ext.P5 postal

receipt. The notice was received by the accused on 08.04.1999 as evidenced by Ext.P6 postal acknowledgment card. The accused did not pay

the amount within 15 days nor did he send any reply. Thereupon, the complaint was filed on 19.05.1999.

4. The court below acquitted the accused mainly for the following two grounds:

1. The case of the accused during his examination u/s 313 Cr.P.C that Ext.P2 was issued as a blank cheque towards security when the accused

received the amount after kuri No. 39 was auctioned and for the default of 5 instalments committed by him, he was admitted to kuri No. 22 in

which he had paid 21 instalments and the complaint was filed by misusing the blank signed cheque issued as security, appears to be probable.

2. PW1 who is a clerk in the complainant's company, has not proved that he was duly authorised to file the complaint. Ext.P1 is only an

unauthenticated xerox copy of the resolution by the Board of Directors of the Company.

5. After hearing both sides, I do not think that both the grounds mentioned by the court below can be sustained to support the order of acquittal.

The clerk of the complainant was examined as PW1. It was elicited from his cross examination that the sum of Rs. 32,000/- mentioned in Ext.P2

cheque represents the 5 defaulted instalments made by the accused towards kuri No. 39 and it was the accused himself who brought and gave

Ext.P2 cheque after writing the amount and filling up the same. Even though PW1 does not say that a defaulter will not be admitted to another kuri,

the court below without anything on record has concluded that if the accused was treated as a defaulter, then he would not have been admitted to

kuri No. 22 as evidenced by Ext.D1 pass book. PW1 denied the suggestion put to him that it was to wipe off the default made by the accused

towards kuri No. 39 that he was allowed to join kuri No. 22. If so, the court below could not have assumed that the accused was allowed to join

kuri No. 22 for the purpose of wiping off the default in kuri No. 39. It is significant to note that the accused did not even care to send a reply to

Ext.P4 statutory notice. He did not also mount the witness box to speak in support of the defence set up by him. Under these circumstances, the

court below was not justified in holding that Ext.P2 cheque represents the defaulted instalments made by the accused towards kuri.

6. It is true that Ext.P1 is only an unauthenticated photocopy of the resolution passed by the Board of Directors of the complainant company

authorising PW1 to file the complaint and give evidence. But then, it was not even faintly suggested to PW1 that he did not have the authority to file

a complaint. Even though it was PW1 who filed the complaint, the complaint was filed on behalf of the Sukanya Kuries & Loans which is the

complainant. In M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another, , it was held that the complaint filed in the

name and on behalf of the company by its employee without the necessary authorisation was nonetheless maintainable and want of authorisation

can be rectified even at a subsequent stage. Here, when the accused had not disputed the locus standi of PW1 to file a complaint and give

evidence at any stage of the proceedings, it was not open to him to challenge the locus standi of PW1 to file a complaint on behalf of the company

and give evidence on behalf of the company.

7. The result of the foregoing discussion is that the appellant/complainant had successfully proved that the accused had committed the offence

punishable u/s 138 of the Negotiable Instruments Act. The 1st respondent/accused is accordingly found guilty of the said offence and is convicted

thereunder. For the said conviction, he is sentenced to pay a fine of Rs. 35,000/- (Rupees thirty five thousand only) by way of fine. On default to

pay the fine, he shall undergo simple imprisonment for two months. The 1st respondent/accused is given one month's time to deposit the fine

amount before the trial court. The amount as and when realised shall be paid to the complainant by way of compensation u/s 357(1)(a) Cr.P.C.

Dated this the 29th day of September, 2009.