
Pramod P.P. Vs M.O. David

Crl. Rev. Pet. No. 776 of 2014

Court: High Court Of Kerala

Date of Decision: June 2, 2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 357(3)#Negotiable Instruments Act, 1881 (NI) â€” Section 138

Citation: (2014) 06 KL CK 0043

Hon'ble Judges: P. Ubaid, J

Bench: Single Bench

Advocate: R. Anup, Advocate for the Appellant; P. Thomas Geeverghese, Advocate for R1 and Smt. Bindu Gopinath, Public Prosecutor for R2, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

P. Ubaid, J.

The revision petitioner herein is aggrieved by the conviction and sentence against him u/s 138 of the Negotiable Instruments

Act in CC.No. 628/2008 before the Judicial First Class Magistrate Court-I, Perumbavoor. The prosecution was initiated by the first respondent

herein on the allegation that a cheque for Rs. Two lakhs issued by the revision petitioner in discharge of the amount borrowed by him was

dishonoured due to insufficiency of funds, and inspite of statutory notice, he failed to make payment of the cheque amount.

2. The revision petitioner pleaded not guilty in the trial court, and claimed to be tried. During trial, the complainant examined himself as Pw1 and

marked Exts. P1 to P4. No defence evidence was adduced on the side of the revision petitioner to prove the claim regarding the actual amount

due. On an appreciation of the evidence the learned Magistrate found the revision petitioner guilty u/s 138 of the NI Act. On conviction he was

sentenced to undergo simple imprisonment for six months, and was also directed to pay a compensation of Rs. Two lakhs to the complainant u/s

3. Aggrieved by the conviction and sentence the revision petitioner approached the Court of Sessions, Ernakulam with CrI. Appeal No. 391/2012.

In appeal, the learned Vth Addl. Sessions Judge confirmed the conviction. However, the sentence was modified in appeal, and accordingly the jail

sentence was reduced to simple imprisonment for three months. However, the direction to pay compensation was maintained. Now the

accused/revision petitioner is before this Court in revision, challenging the legality and propriety of the conviction and sentence.

4. Notice on admission was given to the first respondent. On hearing the learned counsel on both sides and on a perusal of the case records I find

that this revision can be disposed of, with some modification in sentence, without causing any prejudice or hardship to the first respondent/complainant.

5. The complainant has given definite and consistent evidence proving the alleged transaction, and also proving execution of Ext.P1 cheque. Ext.P1

cheque was in fact issued by the revision petitioner in discharge of a liability. It has come out in evidence that Ext.P1 cheque, admittedly bearing the

signature of the revision petitioner was handed over by him to the complainant. This evidence stands not in any manner discredited. The plea made

by the accused stands not in any manner proved. I find that the complainant has well proved his case that Ext.P1 cheque was issued by the revision

petitioner in discharge of a debt incurred by him, and it was bounced due to insufficiency of funds. The revision petitioner has admitted that he had

received the statutory notice. He has no case that he had made payment of the cheque amount as demanded in the notice. The complaint was filed

by the complainant within time. I find no scope for interference in the conviction on the ground of any irregularity or illegality. I feel that the jail

sentence can be reduced to the minimum possible under the law when the concern of the complainant is only to get the amount.

6. The learned counsel for the revision petitioner made a request to grant some reasonable time to make the payment of compensation in the trial

court. In the facts and circumstances of the case I feel that, when the cheque amount is Rs. Two lakhs some reasonable time can be granted to the

revision petitioner as requested.

7. In the result, this revision is allowed in part, confirming the conviction, however modifying the sentence to the effect that the jail sentence

imposed by the trial court will stand reduced to imprisonment till rising of the court. The direction to pay compensation, with default sentence

thereon, is maintained. The revision petitioner is given time for three months to surrender before the trial court to serve out the sentence and make

payment of compensation voluntarily, on failure of which, steps shall be taken by the trial court to enforce the sentence and recover the amount of

compensation, or impose default sentence.