John K. John vs Tom Varghese & Anr on 12 October, 2007

Equivalent citations: AIR 2008 SUPREME COURT 278, 2007 (12) SCC 714, 2007 AIR SCW 6736, 2008 (1) AIR KANT HCR 129, 2008 CLC 214 (SC), (2008) 116 FACLR 529, (2007) 2 CRILR(RAJ) 872, (2008) 4 SERVLR 153, 2007 ALL MR(CRI) 3283, 2007 (12) SCALE 333, 2008 (3) SCC(CRI) 374, 2008 (1) CRI RJ 664, (2008) 1 CURLR 1063, 2007 CRILR(SC MAH GUJ) 872, (2008) 1 CAL HN 746, (2007) 60 ALLINDCAS 83 (SC), (2008) 62 ALLINDCAS 777 (CAL), (2007) 12 SCALE 333, (2007) 140 COMCAS 473, (2007) 4 CIVILCOURTC 690, (2007) 4 CURCRIR 294, (2007) 38 OCR 772, (2007) 4 PAT LJR 211, (2007) 4 RECCRIR 807, (2007) 4 BANKCAS 659, (2007) 7 SUPREME 316, (2007) 4 RECCIVR 724, (2007) 4 JLJR 203, (2008) 1 NIJ 101, (2008) 60 ALLCRIC 331, (2008) 1 CAL LJ 15, (2007) 4 CRIMES 155, 2007 CRILR(SC&MP) 872, (2008) 1 ICC 5, (2008) 1 BANKCLR 297, 2008 (1) ANDHLT(CRI) 444 SC

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Bench: S.B. Sinha, Harjit Singh Bedi

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           CASE NO.:
Appeal (crl.)  1433-1434 of 2007

PETITIONER:
John K. John

RESPONDENT:
Tom Varghese & Anr

DATE OF JUDGMENT: 12/10/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
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J U D G M E N T [Arising out of SLP (Crl.) No. 6038-6039 of 2005] S.B. SINHA, J :

1. Leave granted.

2. The complainant is before us being aggrieved by and dissatisfied with a judgment and order dated 24.08.2005 passed by a learned Single Judge of the High Court of Kerala in Crl. R.P. Nos. 2255 and 2256 of 2004 whereby and whereunder the judgment of conviction and sentence passed by the learned Trial Judge and affirmed

by the Appellate Court, was set aside.

3. Respondent allegedly issued two cheques in favour of the appellant herein. The said cheques when presented were dishonoured for want of insufficient funds. As despite service of notice, the respondent did not make any payment, two complaint petitions were filed against him.

4. The question which arose for consideration before the learned Trial Judge and consequently before the Court of Appeal as also the Revisional Court was as to whether the said cheques had been issued towards discharge of any existing debt.

5. Relationship between the parties is not in dispute. The complainant used to run chitties. Respondent was a subscriber to three chitties conducted by the firm of the appellant. In respect of one of the chitties, the bid was held on 7.10.1997 for a sum of Rs. 1,00,000/-. The amount was paid on 3.11.1997. Bid was again made by the respondent in relation to another chitty on 7.04.1998, for a sum of Rs. 1,00,000/-. The amount was paid on 25.06.1998. Allegedly, Respondent committed defaults in payment of the instalments in relation thereto with effect from 7.04.1998.

Indisputably, a suit for realization of the said amount was filed by the appellant against the respondent in the Court of the Subordinate Court, Kottayam which was marked as O.S. No. 1 of 2000. Another suit being O.S. No. 168 of 2000 was instituted before the Munsiff Court, Changancherry claiming a sum of Rs. 55,900/-. Respondent, apart from the aforementioned two chitties, was a subscriber to another chitty for a sum of Rs. 50,000/-. It was not prized by the respondent. On an allegation that the respondent along with three others had borrowed a sum of Rs. 1,00,000/- from him on 26.03.1998 wherefor he executed a demand promissory note and as despite demand, the said amount was not paid to him, the appellant instituted another suit being O.S. No. 362 of 1999 in the Subordinate Court, Kottayam for recovery of a sum of Rs. 1,00,000/- with interest.

6. Appellant herein admittedly was conducting chitty transactions in the name of a firm known as Karappara Chitty Funds . He is a partner of the said firm. The suits were instituted by him representing the said firm. Appellant contended that despite the fact that the respondent herein was a defaulted subscriber of two prized chitties, he took personal loan from him in his personal capacity.

7. Before the learned Trial Judge, the respondent examined two witnesses who proved the aforementioned fact. The learned Trial Judge, in its judgment, took notice of the pendency of the several civil litigations by and between the parties hereto. It, however, proceeded on the basis that as admittedly cheques have been issued by the respondent which on presentation were not honoured, he committed an offence under Section 138 of the Negotiable Instruments Act (for short the Act). The said findings of the learned Trial Judge was upheld in appeal by Shri K. Ramakrishnan, learned Additional Sessions Judge by a judgment and order dated 17.03.2004.

8. The High Court, however, in the revision application filed by the respondent herein opined that the learned Trial Judge as also the Appellate Court could not have rejected the evidence adduced by the respondent and in particular those of DWs 1 and 2 in view of the fact that admitted and proved facts strengthened their versions or at least probabilised the same. Holding that the respondent herein has successfully rebutted the presumption arising under Section 139 of the Act, it was held that the appellant did not succeed in proving that the respondent had borrowed any sum for which the said cheques were issued.

9. Mr. B.V. Deepak, learned counsel appearing on behalf of the appellant, submitted that the High Court was not correct in reversing the findings of the learned Trial Judge as also the Court of Appeal in exercise of its revisional jurisdiction. There was no reason, the learned counsel contended, as to why a presumption in terms of Section 139 of the Act could not have been raised against the accused as admittedly the cheques were issued by him which, on presentation, were dishonoured.

10. Relationship between the parties is not in dispute. The complainant is a partner of a firm which is in the business of running chitty fund. The fact that the respondent subscribed three chitties and that he could not pay the instalments of the prized amount is not in dispute. Pendency of three civil suits filed by the firm through the appellant against the respondent is also not in dispute. The High Court upon analyzing the materials brought on records by the parties had arrived at a finding of fact that in view of the conduct of the parties it would not be prudent to hold that the respondent borrowed a huge sum despite the fact that the suits had already been filed against him by the appellant. Presumption raised in terms of Section 139 of the Act is rebuttable. If, upon analysis of the evidence brought on records by the parties, in a fact situation obtaining in the instant case, a finding of fact has been arrived at by the High Court that the cheques had not been issued by the respondent in discharge of any debt, in our opinion, the view of the High Court cannot be said to be perverse warranting interference by us in exercise of our discretionary jurisdiction under Article 136 of the Constitution of India. The High Court was entitled to take notice of the conduct of the parties. It has been found by the High Court as of fact that the complainant did not approach the court with clean hands. His conduct was not that of a prudent man. Why no instrument was executed although a huge sum of money was allegedly paid to the respondent was a relevant question which could be posed in the matter. It was open to the High Court to draw its own conclusion therein. Not only no document had been executed, even no interest had been charged. It would be absurd to form an opinion that despite knowing that the respondent even was not in a position to discharge his burden to pay instalments in respect of the prized amount, an advance would be made to him and that too even after institution of three civil suits. The amount advanced even did not carry any interest. If in a situation of this nature, the High Court has arrived at a finding that the respondent has discharged his burden of proof cast on him under Section 139 of the Act, no exception thereto can be taken.

11. It is now a well-settled principle of law that this Court in exercise of its jurisdiction under Article 136 of the Constitution of India would ordinarily not interfere with the judgment of acquittal, if two views are possible.

In M.S. Narayana Menon Alias Mani v. State of Kerala and Another [(2006) 6 SCC 39], this Court held:

4. In any event the High Court entertained an appeal treating to be an appeal against acquittal, it was in fact exercising the revisional jurisdiction. Even while exercising an appellate power against a judgment of acquittal, the High Court should have borne in mind the well-settled principles of law that where two views are possible, the appellate court should not interfere with the finding of acquittal recorded by the court below. [See also Mahadeo Laxman Sarane & Anr. v. State of Maharashtra, 2007 (7) SCALE 137]

12. For the reasons aforementioned, there is no merit in these appeals which are dismissed accordingly.