

Kerala High Court

P.K.Jayaprakash vs State Of Kerala & Another on 29 June, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Crl.Rev.Pet.No. 2053 of 2009()

1. P.K.JAYAPRAKASH

... Petitioner

Vs

1. STATE OF KERALA & ANOTHER

... Respondent

For Petitioner :SRI.P.HARIDAS

For Respondent :PUBLIC PROSECUTOR

The Hon'ble MR. Justice THOMAS P.JOSEPH

Dated :29/06/2009

O R D E R

THOMAS P.JOSEPH, J.

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CRL. R.P. NO.2053 of 2009

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Dated this the 29th day of June, 2009

O R D E R

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Notice to respondent No.2 is dispensed with in view of the order I am proposing to pass which is not prejudicial to him. Public Prosecutor takes notice for respondent No.1.

2. This revision is in challenge of judgment of learned Additional Sessions Judge (Adhoc-I), Kottayam in Crl. Appeal No.259 of 2007 confirming conviction and sentence on petitioner for offence punishable under Section 138 of the negotiable Instruments Act.

3. Case arose on a complaint preferred by respondent No.2. He claimed that petitioner borrowed

Rs.2,50,000/- from him and issued Ext.P1, cheque in discharge of that amount. That cheque was dishonoured for insufficiency of funds. On getting dishonour intimation respondent No.2 issued notice to the petitioner intimating dishonour and demanding payment of the amount. Dishonour of the cheque for reason stated above and issue and service of notice on petitioner are proved by Exts.P2 to P9. Findings entered by the courts below in that regard are not under challenge. Respondent No.2 as P.W.1 gave evidence and stated about the transaction between him and petitioner CRL. R.P. No.2053 of 2009 leading to the execution of cheque. According to petitioner he had not borrowed any amount from respondent No.2. He had received money from M/s.Ettumanoor City Finance after hypothecating his vehicle. At that time a signed blank cheque was given as security. He defaulted payment of the installment and the vehicle was repossessed by the financier. Exhibit D1 is certified copy of report in Crime No.295 of 2004 regarding alleged repossession of the vehicle. Learned magistrate observed that it is not shown that Ext.D1 is connected with the transaction referred to by P.W.1. It is contended that finding of courts below regarding due execution of the cheque is not correct.

4. It is not disputed that Ext.P1 is signed by petitioner and drawn on the account maintained by him. According to him that cheque was given to a financier with whom he had hypothecated his vehicle. It is to prove repossession of the vehicle that Ext.D1 is produced. Courts below held that Ext.D1 is not proved to be connected with Ext.P1. Mere production of Ext.D1 is not sufficient. Respondent No.2 denied the suggestion put on behalf of petitioner. Petitioner did not reply to the statutory notice. If no amount was due to respondent No.2 in the manner claimed by the latter petitioner would have normally replied to the notice served on him. Petitioner CRL. R.P. No.2053 of 2009 has no satisfactory explanation for not replying to the statutory notice. Nothing is brought out to disbelieve evidence of P.W.1. Courts below have taken note of these circumstances to find in favour of due execution of the cheque. I do not find reason to interfere with that finding.

5. Learned magistrate sentenced petitioner to undergo simple imprisonment for five months. Petitioner was directed to pay compensation of Rs.2,50,000/- and in default to undergo simple imprisonment for five months. Appellate court modified substantive sentence as simple imprisonment till rising of the court while retaining the direction for payment of compensation and the default sentence. I do not find reason to interfere with the sentence as modified by the appellate court and the direction for payment of compensation with default sentence.

6. Learned counsel for petitioner requested six months' time to deposit the compensation. Counsel states that petitioner's property has been taken over by another creditor for realisation of the amount due to it. Petitioner is unable to raise the amount immediately. Considering the difficulties expressed by petitioner I am inclined to grant five months' time to petitioner to deposit the compensation in the trial court.

CRL. R.P. No.2053 of 2009 Resultantly, this revision fails. It is dismissed. Petitioner is granted five months' time from this day to deposit the compensation in the trial court. It is made clear that it shall be sufficient compliance of the direction for deposit of compensation if petitioner paid compensation to respondent No.2 through his counsel in the trial court and respondent No.2 filed a statement in the trial court through his counsel acknowledging receipt of compensation within the

said period of three months.

Petitioner shall appear in the trial court on 1.12.2009 to receive the sentence.

THOMAS P.JOSEPH, JUDGE.

vsv CRL. R.P. No.2053 of 2009