

Kerala High Court

N. Dayanandan vs C. Hemanth Kumar on 10 December, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Crl.Rev.Pet.No. 677 of 2002()

1. N. DAYANANDAN, EDITIORIAL SECTION,  
... Petitioner

Vs

1. C. HEMANTH KUMAR, S/O. SANKARAN NAIR,  
... Respondent

2. THE STATE OF KERALA REP. BY

For Petitioner :SRI.THOMAS ANTONY

For Respondent :PUBLIC PROSECUTOR

The Hon'ble MR. Justice P.Q.BARKATH ALI

Dated :10/12/2009

O R D E R

P.Q. BARKATH ALI, J.

-----  
CRL. R.P. 677 of 2002  
-----

Dated: DECEMBER 10, 2009

ORDER

The challenge in this revision petition is to the judgment of Judicial First Class Magistrate Court-I, Kozhikode in C.C. No.362/1997 dated 10th May 2000 convicting the revision petitioner under sec.138 of the Negotiable Instruments Act and sentencing him to undergo simple imprisonment for six months which is confirmed in appeal by the II Additional Sessions Court, Kozhikode by judgment in Crl.A.254/2000 dated 11th October 2001.

2. The case of the revision 1st respondent/complainant as testified by him as PW.1 before the trial court and as detailed in the complaint is that the accused borrowed Rs.50,000/- from him on September 20, 1996 and to discharge that liability the accused issued the cheque Ext.P1 dated September 25, 1996 drawn on the State Bank of Travancore, Kozhikode Main Branch which, when presented for collection, was returned dishonoured for want of sufficiency of funds in the account of the revision petitioner in the bank and that in spite of the notice Ext.P4 dated October 10, 1996, the accused did not repay the amount, which is an offence punishable under sec.138 of the Negotiable Instruments Act.

3. On receipt of the complaint the learned magistrate recorded the sworn statement of the complainant/PW.1 and took cognizance of the offence. The accused on appearance before the trial court pleaded not guilty to the charge under sec.138 of the Negotiable Instruments Act. PW.1 was examined and Exts.P1 to P7 were marked on the side of the complainant. When questioned under sec.313 Cr.P.C. by the trial court, the accused submitted that he has borrowed Rs.3000/- from one Viswanathan and that at that time he gave a signed blank cheque to him as security which was misused by the complainant and created Ext.P1. On the side of the accused, DW.1 was examined.

4. The learned magistrate on an appreciation of evidence found the revision petitioner guilty of the offence punishable under sec.138 of the Negotiable Instruments Act, convicted him thereunder and sentenced him as aforesaid which is confirmed in appeal. The accused has now come up in revision challenging his conviction and sentence.

5. Heard the counsel for the revision petitioner. The revision 1st respondent/complainant, though received notice, remained absent.

6. The following points arise for consideration:-

I. Whether the conviction of the revision petitioner under sec.138 of the Negotiable Instruments Act can be sustained?

II. Whether the sentence imposed is excessive or unduly harsh?

Point No.I

7. The complainant was examined as PW.1 and he produced Exts.P1 to P7 to prove his case. He testified in terms of the complaint before the trial court. Nothing was brought out during his cross-examination to discredit his evidence. Further his evidence is supported by Exts.P1 to P7.

8. The case of the accused was that he borrowed Rs.3000/- from one Viswanathan and to discharge that liability he gave a signed blank cheque to him which was misused by the complainant and created Ext.P1 cheque. No evidence was adduced on the side of the accused to prove his case. That apart, as the accused has admitted the execution of the cheque Ext.P1, the presumption under secs.118 and 139 of the Negotiable Instruments Act is available to the complainant. The accused did not adduce any evidence to rebut the above presumption.

9. For all these reasons I feel that the trial court as well as the lower appellate court is perfectly justified in accepting the evidence of PW.1 and coming to the conclusion that the accused has committed an offence punishable under sec.138 of the Negotiable Instruments Act. Therefore I confirm the conviction of the revision petitioner/accused under sec.138 of the Negotiable Instruments Act. Point No.II

10. As regards the sentence, the trial court imposed a sentence of simple imprisonment for six months which is confirmed in appeal. As the transaction is of the year 1996 and as in spite of the notice the 1st respondent did not appear, I feel that a sentence of imprisonment till the rising of court and a fine of Rs.50,000/- would meet the ends of justice.

In the result, the revision petition is allowed in part. The conviction of the revision petitioner under sec.138 of the Negotiable Instruments Act is confirmed. The sentence is modified to the effect that the revision petitioner is sentenced to undergo imprisonment till the rising of court and to pay a fine of Rs.50,000/-, in default to undergo simple imprisonment for six months. His bail bonds are cancelled. Two months time is granted for payment of fine. The fine amount, if realised, shall be paid to the complainant as compensation as provided under sec.357(1) of Cr.P.C. Counsel for the revision petitioner submits that the revision petitioner has already deposited Rs.25,000/- before the trial court. The said amount shall be adjusted towards the fine amount. The complainant will be entitled to withdraw that amount from the trial court. The accused/revision petitioner shall surrender before the trial court on or before 30.12.2009 to receive the sentence.

P.Q. BARKATH ALI, JUDGE CRL.M.P.4099 of 2002 Dismissed.

10.12.2009. P.Q. BARKATH ALI, JUDGE mt/-