

Kerala High Court

K.G.Haridas vs P.P.James on 21 December, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Crl.Rev.Pet.No. 236 of 2003()

1. K.G.HARIDAS, KOPLERIKKATTIL HOUSE,
... Petitioner
2. S.S.MURALEEKRISHNA, KAUSTHUBHAM,

Vs

1. P.P.JAMES, PROPRIETOR, MAHARANI VISIONS
... Respondent

2. STATE OF KERALA, REPRESENTED BY

For Petitioner :SRI.P.N.RAMAKRISHNAN NAIR

For Respondent :SRI.K.K.CHANDRAN PILLAI

The Hon'ble MR. Justice M.L.JOSEPH FRANCIS

Dated :21/12/2010

O R D E R

M.L. JOSEPH FRANCIS, J.

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Crl.R.P.No. 236 of 2003
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Dated this the 21st day of December, 2010

O R D E R

This Crl.R.P. is filed by the accused in C.C.No. 135 of 1999 on the file of the Chief Judicial Magistrate Court, Thodupuzha. The cheque amount was Rs.10,000/- In the trial court the accused were convicted under Section 138 of the N.I. Act and sentenced to undergo S.I. for one month each. The appeal filed by them as Crl.A.No. 62 of 2001 before the Sessions Court, Thodupuzha was dismissed. Against that conviction and sentence the accused filed this revision petition.

2. Heard learned counsel for the revision petitioners, learned counsel for the complainant and the learned Public Prosecutor.

3. The learned counsel appearing for the revision petitioners reiterated the same contentions raised before the Crl.R.P.No. 236 of 2003 trial Court and the appellate court. Learned counsel for the complainant supported the judgment of the court below.

4. The courts below have concurrently held that the cheque in question was drawn by the petitioners in favour of the complainant, that the complainant had validly complied with clauses (a) and (b) of the proviso to Section 138 of the N.I. Act and that the Revision petitioners/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioners while entering the conviction. The said conviction has been recorded after a careful evaluation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the conviction so recorded concurrently by the courts below and the same is hereby confirmed. Crl.R.P.No. 236 of 2003

5. In the decision reported in *Damodar S. Prabhu v. Sayed Babalal H* (2010 (2) KHC 428 (SC)), it was held that in a case of dishonour of cheques, compensatory aspect of the remedy should be given priority over the punitive aspect. Considering the facts and circumstances of the case, I am of the view that sentencing the accused to pay a fine of Rs.5,000/- each would meet the ends of justice. The said fine shall be paid as compensation under Section 357(1) of Cr.P.C. The revision petitioners are permitted either to deposit the said fine amount before the Court below or directly pay the compensation to the complainant within one month from today and to produce a memo to that effect before the Trial Court in case of direct payment. If they fail to deposit or pay the said amount within the aforesaid period, they shall suffer simple imprisonment for one month by way of default sentence. The amount, if any, deposited in the trial court by the accused can be given credit to. Crl.R.P.No. 236 of 2003

6. Accordingly this Revision Petition is disposed of confirming the conviction entered and by modifying the sentence imposed on the revision petitioners.

(M.L. JOSEPH FRANCIS) Judge tm