

Kerala High Court

E.K.Krishnankutty (Rtd.) vs The State Of Kerala on 3 September, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Crl.Rev.Pet.No. 2607 of 2010()

1. E.K.KRISHNANKUTTY (RTD.),  
... Petitioner

Vs

1. THE STATE OF KERALA,  
... Respondent

2. JOY RAJ, S/O.ARUMALNAYAKOM,

For Petitioner :SRI.SASTHAMANGALAM S. AJITHKUMAR

For Respondent : No Appearance

The Hon'ble MR. Justice V.K.MOHANAN

Dated :03/09/2010

O R D E R

V.K.MOHANAN, J.

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Crl. R.P.No.2607 of 2010  
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Dated this the 3rd day of September, 2010.

O R D E R

The accused in a prosecution for an offence u/s.138 of Negotiable Instruments Act is the revision petitioner, as he is aggrieved by the order of conviction and sentence imposed by the courts below.

2. The case of the complainant is that the accused/revision petitioner owed a sum of Rs.50,000/- from the complainant and issued a cheque dated 25.2.2002 for Rs.50,000/-, which when presented for encashment dishonoured, as there was no sufficient fund in the account maintained by the accused and the cheque amount was not repaid inspite of a formal demand notice and thus the revision petitioner has committed the offence punishable u/s.138 of Negotiable Instruments Act.

With the said allegation, the complainant approached the Judl. First Class Magistrate Court-VII, Thiruvananthapuram, by filing a formal complaint, upon which cognizance was taken u/s.138 of CrI. R.P.No.2607 of 2010 Negotiable Instruments Act and instituted S.T.No.916/06. During the trial of the case, PW1, the complainant himself was examined from the side of the complainant and Exts.P1 to P5 were marked. No evidence either oral or documentary adduced from the side of the defence. On the basis of the available materials and evidence on record, the trial court has found that the cheque in question was issued by the revision petitioner/ accused for the purpose of discharging his debt due to the complainant. Thus accordingly the court found that, the complainant has established the case against the accused/ revision petitioner and consequently found that the accused is guilty and thus convicted him u/s.138 of Negotiable Instruments Act. On such conviction, the trial court sentenced the revision petitioner to undergo simple imprisonment for 5 months and to pay a fine of Rs.50,000/- u/s.138 of NI Act, failing which the revision petitioner was directed to undergo simple imprisonment for 3 months. It is also ordered that if the fine amount is realised the same shall be paid to the complainant as compensation u/s.357(1)(b) of Cr.P.C.

3. Though an appeal was filed, at the instance of the CrI. R.P.No.2607 of 2010 revision petitioner/accused, by judgment dated 16.6.2010 in CrI.A.479/07, the Court of Sessions Judge, Thiruvananthapuram, allowed the appeal only in part and while confirming the conviction, sentence imposed against the revision petitioner, is modified and reduced to one day simple imprisonment ie., till the rising of the court and accordingly directed the revision petitioner to pay a sum of Rs.50,000/- as fine and in default to undergo simple imprisonment for 3 months. It is also ordered that on realisation of the fine amount, the same shall be given to the complainant as compensation u/s.357(1)(b) of Cr.P.C. Thus the revision petitioner is directed to appear before the trial court on 31.8.2010 to receive the sentence. It is the above conviction and sentence challenged in this revision petition.

4. I have heard the learned counsel appearing for the revision petitioner and also perused the judgments of the courts below.

5. Reiterating the stand taken by the accused/revision petitioner during the trial and appeal, submitted that the complainant has not established the transaction and also the CrI. R.P.No.2607 of 2010 execution and issuance of the cheque. But no case is made out to interfere with the concurrent findings of the trial court as well as the lower appellate court. Therefore, I find no merit in the revision petition and accordingly the conviction recorded by the courts below against the revision petitioner u/s.138 of Negotiable Instruments Act, is approved.

6. As this court is not inclined to interfere with the conviction recorded by the courts below, the learned counsel for the revision petitioner submitted that some breathing time may be granted to pay the fine amount and further submitted that the revision petitioner may be permitted to pay the compensation amount directly to the complainant, instead of imposing fine amount. Having regard to the facts and circumstances involved in the case, I am of the view that the said submission can be considered but subject to other facts and circumstances involved in the case.

7. The apex court in a recent decision reported in Damodar S.Prabhu V. Sayed Babalal H. (JT 2010(4) SC 457) has held that, in the case of dishonour of cheques, the compensatory CrI. R.P.No.2607 of 2010 aspect of the remedy should be given priority over the punitive aspects. In the present case, the cheque in question is dated 25.2.2002, that too for an amount of Rs.50,000/-. Thus as per the records and the findings of the courts below, which approved by this court, a sum of Rs.50,000/- which belonged to the complainant is in the hands of the revision petitioner for the last 8 years. Considering the above facts and legal position, I am of the view that the revision petitioner can be granted 3 months time to pay the fine amount but subject to slight enhancement with respect to the fine amount, since the cheque amount is due to the complainant atleast from 25.2.2002 onwards.

In the result, this revision petition is disposed of confirming the conviction against the revision petitioner u/s.138 of Negotiable Instruments Act as recorded by the courts below. Accordingly, the sentence of imprisonment as modified and refixed by the appellate court, is confirmed. Accordingly, the revision petitioner is directed to pay a sum of Rs.62,500/- to the complainant as compensation u/s.357(3) of Cr.P.C. Thus, the revision petitioner is directed to appear before the trial court on CrI. R.P.No.2607 of 2010 3.12.2010, to receive the sentence of imprisonment and to pay the amount of compensation. The revision petitioner is free to pay the compensation amount either directly to the complainant or remitting the same in the court below, which ever subject to the satisfaction of the learned Magistrate. In case any failure on the part of the revision petitioner in appearing before the court below as directed above and in making the payment of fine amount, the trial court is free to take coercive steps to secure the presence of the revision petitioner and to execute the sentence and the compensation awarded against the revision petitioner. The coercive steps if any, pending against the revision petitioner shall be deferred till 3.12.2010.

Criminal revision petition is disposed of accordingly.

V.K.MOHANAN, Judge.

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