

Kerala High Court

Moideenkoya vs T.Rajan on 6 March, 2009

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Crl.Rev.Pet.No. 528 of 2000()

1. MOIDEENKOYA

... Petitioner

Vs

1. T.RAJAN

... Respondent

For Petitioner :SRI.V.V.SURENDRAN

For Respondent :PUBLIC PROSECUTOR

The Hon'ble MR. Justice V.GIRI

Dated :06/03/2009

O R D E R

V.GIRI, J

Crl.R.P.528/2000

Dated this the 6th day of March, 2009

ORDER

Accused in C.C.236/90 on the files of the Chief Judicial Magistrate Court, Kozhikode, is the petitioner in this Criminal Revision Petition. He was prosecuted, convicted and sentenced for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. The case of the prosecution was that the complainant was running a stationary shop at Jail Road, Calicut and his friend Ramadas was running another stationary shop. The office of S.K.S Travels is on the opposite side of the said shops. S.K.S Travels operates bus service from Kozhikode to Bangalore. On 22.10.1989, bus No.CAK 5200 belonging to S.K.S.Travels hit the aforementioned shops and the complainant and the neighbouring shop owner suffered considerable damage on account of loss of articles. Ext.P1 agreement was Crl.R.P.528/2000 therefore, drawn up in which the

Manager of S.K.S Travels had agreed to compensate the complainant and Mr.Ramadas for damage that had been caused to them. The damage was not then assessed. Therefore, the figure was not mentioned. But contrary to the undertaking so given, complainant and Mr.Ramadas were not compensated. On 23.12.1989, the complainant and his friend Ramadas blocked the running of the bus belonging to S.K.S Travels. Therefore, there was delay in the commencing of the service. Passengers were waiting for the bus. One of them was the daughter- in-law of PW2, who was then the senior executive president of Gwaliyor Rayons, Mavoor. He had intervened and persuaded the parties to settle the dispute. Claim was agreed to be settled for an amount of Rs.40,000/- to be paid to the complainant and his friend Ramadas. Rs.5,000/- was paid in cash and Ext.P2 cheque was issued for the balance amount. The accused said that he owed money to S.K.S travels and therefore, he issued Crl.R.P.528/2000 Ext.P2 cheque. Entries in Ext.P2 cheque was actually written by PW2, Mr.Sabu. Cheque on presentation was dishonoured and later the complaint was lodged, after complying with the statutory formalities. The defence taken by the accused was that he did not owe any money, nor does the complainant have any such case. Cheque in question was issued only as a measure of security, to enable S.K.S Travels to pay the amount due to the complainant and Mr.Ramadas.

3. The Courts below declined to accept the case of the accused and proceeded to convict and sentence him for the offence punishable under Section 138 of the Negotiable Instruments Act. Hence this Revision.

4. I heard Mr.V.V.Surendran, learned counsel for the petitioner. In spite of notice, there is no appearance on behalf of the first respondent. I have gone through the evidence adduced. Even the Crl.R.P.528/2000 complainant does not have a case that the accused had owed any money to the complainant or his friend Ramadas. The cheque in question was issued as a self drawer cheque. If the version of the accused is accepted, then it will mean that the accused had issued the cheque, as a measure of guarantying payment of the amount to S.K.S Travels. No doubt, issuance of a cheque by a third party, for discharge of liability incurred by another person, would also be supported by adequate consideration, in the sense that the liability of S.K.S Travels would also be a consideration for a cheque issued by the accused. But, I find force in the contention raised by the learned counsel for the petitioner that the actual amount that had to be paid as compensation to the complainant and Mr.Ramadas was not assessed on the date of issuance of the cheque. Only an approximate figure was mentioned even by PW1. Therefore, issuance of cheque on 23.12.2008 may not have been treated as one for discharge of a Crl.R.P.528/2000 liability which had then been incurred by the accused vis-a-vis the complainant. In my view, these aspects have not been correctly appreciated by the Courts below. Therefore, the matter requires a re-consideration by the Court below. I take note of the contention of the learned counsel for the petitioner that neither the complainant nor Mr.Ramadas are currently available and they are not really interested in prosecuting the matter.

5. For all these reasons, Criminal Revision Petition is allowed. Orders passed by the Courts below are set aside and the case is remitted back to the trial Court for fresh consideration. If an application is made by the complainant for adducing any fresh evidence, that shall be considered in accordance with law by the Court below. So also any motion made by the accused for additional evidence shall also be dealt with by the Court below in accordance with law.

Crl.R.P.528/2000 Parties shall appear before the Court below on 6.4.2009. Registry shall transmit the LCR back to the Court below.

V.GIRI, Judge mrcs