

Tomy Jacob Katikkaran

Vs

Dr. Thomas Manjaly

(M.K. Mukherejee, S. Saghir ahmad JJ)

08.08.1997

JUDGMENT

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M.K.MUKHERJEE, J.

1. Leave granted.

2. On February 12, 1990 the appellant filed a complaint against the respondent No.1 ('respondent' for short) in the Court of The Chief Judicial Magistrate, Ernakulam alleging commission of an offence under Section 138 of the Negotiable Instruments Act ('Act' for short). The sum and substance of the various allegations made in the complaint are as follows: On final settlement of accounts of the various commercial transactions that took place between the appellant and the respondent, an amount of Rs. 3,00,000/- was found due to the former from the latter. In payment thereof the respondent issued a cheque in favour of the appellant which on presentation was dishonoured. The appellant then sent a notice to the respondent demanding the amount but it came back unserved with an endorsement that he was absent. Thereafter another similar notice was sent to and served upon the respondent but he did not pay the amount.

3. While the case arising out of the appellant's complaint, (which was registered as case No. C.C. 167 of 1990), was awaiting disposal the respondent, in his turn, filed a complaint against the appellant before the same Magistrate, for alleged commission of offences under Sections 380, 465, 467, 468 and 471 I.P.C. The allegations in his complaint were that in the year 1985 when he went abroad he entrusted three blank cheques of the State Bank of India, Shenmugnam Road Branch, Ernakulam, duly signed by him to his wife to meet the family expenses. The appellant, who had access to the house of the respondent, dishonestly and stealthily removed one of those cheques from his house and utilised it to institute a false case against him by inserting his (the appellant's) name as the payee and the sum of Rs. 3,00,000/- as the amount to be paid thereunder.

4. The case that arose out of the appellant's complaint ended in conviction of the respondent while that of the latter in discharge of the appellant under Section 245(1) Cr.P.C.

5. Against his conviction and sentence the respondent preferred an appeal in the Court of Session which was allowed and he was acquitted. Assailing the above acquittal the appellant filed an appeal before the High Court and the respondent filed a revision petition challenging the order of discharge passed in favour of the appellant. Both the appeal and the revision petition were disposed of by the High Court by a common judgment whereby the High Court upheld the order of acquittal of the respondent, set aside the order of discharge passed in favour of the appellant and directed the Chief Judicial Magistrate to proceed with his trial in accordance with law. The above judgment of the

High Court is under challenge in this appeal at the instance of the appellant.

6. Coming first to the impugned acquittal of the respondent we notice that the Additional Sessions Judge and the High Court recorded a finding that before filing the complaint the appellant did not serve a notice within the period prescribed under Section 138 of the Act. Since the above finding is one of fact and based on proper appreciation of the evidence no interference in respect thereof is called for. However, the impugned judgment of the High Court so far as it set aside the order of discharge passed in favour of the appellant cannot be sustained for on perusal of the record we find that the trial Court was fully justified in concluding that the evidence adduced on behalf of the respondent was insufficient to make out a prima facie case against the appellant.

7. For the foregoing discussion, we quash the order of the High Court so far as it set aside the discharge of the appellant and restore the order of the learned Chief Judicial Magistrate, Ernakulam dated February 17, 1992 passed in C.C. No. 229 of 1990. The appeals are thus disposed of.