

SUPREME COURT OF INDIA

P.K. Manmadhan Kartha

Vs.

Sanjeev Raj

(S Quadri and S Variava JJ.)

03.05.2002

ORDER

1. Leave is granted.

2. This appeal is preferred against the order of the High Court of Kerala at Ernakulam in criminal revision petition No. 1071 of 1999 dated January 11, 2001.

3. The complainant is the appellant. The gravamen of the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 relates to dishonouring of the cheque - exhibit P-1 said to have been issued by respondent No. 1 in favour of the appellant. After trial the learned judicial first class magistrate-II, Thrissur, found respondent no, 1 guilty of the offence and sentenced him to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs. 90,000/- in default of payment of fine he has to undergo simple imprisonment for three months. The order further says that if the fine amount is realised, the entire amount will be given to PW1 by way of compensation under Section 357 Cr.P.C. The appellate court confirmed his conviction but reduced the sentence of imprisonment to the rising of the court. However, in the revision filed by him in the High Court, taking note of the facts that there is no evidence to show that the cheque has been issued prior to the closure of the account and that no contention was raised that the cheque was issued after closure of the account and also noticing that in exhibit P-1 - cheque -there is difference in hand-writings and in ink, the High Court set aside the order of conviction passed by the appellate court confirming the

conviction of respondent No. 1 by the trial court.

4. Having perused the order of the High Court under challenge we are of the view that the above factors do not rebut the statutory presumptions under Sections 139 and 118 of the said Act so as to revise the order, set aside the conviction and sentence. In this view of the matter we are unable to sustain the order under challenge. It is accordingly set aside and the criminal revision petition No. 1071 of 1999 is restored to the file of the High Court to be disposed of in accordance with law after giving an opportunity of being heard to both the parties.

5. The appeal is accordingly allowed. No costs.