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SLP(Crl.)No. 2771 OF 2001

ITEM No.202

Court No. 5

SECTION II
A/N MATTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No. 2771/2001

(From the judgement and order dated 11/01/2001 in CRRP 1071/99
of The HIGH COURT OF KERALA AT ERNAKULAM)

P.K. MANMADHAN KARTHA

Petitioner (s)

VERSUS

SAJEEV RAJ & ANR.

Respondent (s)

(For Final Disposal)

Date : 03/05/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SYED SHAH MOHAMMED QUADRI
HON'BLE MR. JUSTICE S.N. VARIAVA

For Petitioner (s)

Mr. T.G. Narayanan Nair,Adv.

For Respondent (s)

Mr.P.Krishnamurthy,Sr.Adv.
Mr. M.T. George,Adv.

Mr. K.R. Sasiprabhu,Adv.

UPON hearing counsel the Court made the following
O R D E R

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.SP2

Leave is granted.

The appeal is allowed in terms of the signed order.

No costs.

.SP1

[Naresh Kumar]
Court Master

[Kanwal Singh]
Court Master

[Signed order is placed on the file.]

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.....L....I.....T.....T.....T.....T.....T.....J....R
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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 582 OF 2002@@
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[Arising out of SLP(Cr) 2771/2001]

P.K. Manmadhan Kartha ... Appellant

vs.

Sanjeev Raj & Anr. ... Respondents

O R D E R@@
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Leave is granted.

This appeal is preferred against the order of the High Court of Kerala at Ernakulam in Criminal Revision Petition No.1071/1999 dated January 11, 2001.

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-Ex.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 Ex.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.

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 sustains 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 giving an opportunity of being heard to both the parties.

The appeal is accordingly allowed. No costs.

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.....J.
[SYED SHAH MOHAMMED QUADRI]

.....J.
[S.N. VARIAVA]

New Delhi,
May 03, 2002.@@
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