



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 12TH DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

CRIMINAL REVISION PETITION NO. 768 OF 2018

Between:

S.K.Honnappa
S/o. Krishnappa,
Shree Laxmi Venkateshwara Krupa,
Ragavendra Extension,
Sakaleshpura Town,
Sakaleshpura Taluk,
Hassan District - 573 113.

...Petitioner

(By Sri. H.Pavana Chandra Shetty, Advocate)

And:

S.A.Murthy
S/o. S.H.Arjun Rao,
Panduranga Rice Mill,
Malali Road,
Ragavendra Extension,
Sakaleshpura Town-573113.
Sakaleshpura Taluk

...Respondent

(By Sri. B.Chethan, Advocate)

This Criminal Revision Petition is filed under section 397 read with section 401 Cr.P.C. to set aside the judgment and order dated 13.04.2018 passed by the court of the 5th Additional District and Sessions Judge, Hassan, in Criminal Appeal No.125/2017 and confirm/upheld the order dated

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by VEERENDRA
KUMAR K M
Location: HIGH
COURT OF
KARNATAKA



23.06.2017 passed by the court of the Civil Judge and JMFC at Sakaleshpur in C.C.No.311/2015, conviction and sentence under section 255(2) of Criminal Procedure Code, convicted for the offence p/u/s 138 of the N.I Act, and etc.,

This Criminal Revision Petition, coming on for final disposal, this day, order was made therein as under:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

ORAL ORDER

This revision challenges the judgment dated 13.04.2018 passed by the 5th Additional District and Sessions Judge, Hassan, in Criminal Appeal No.125/2017, which was preferred by the accused questioning the correctness of the judgment of the Judicial Magistrate, Sakaleshpura in C.C.No.311/2015 convicting him for the offence punishable under section 138 of the Negotiable Instruments Act ('N.I. Act' for short). Since the Sessions Court reversed the judgment of conviction and acquitted the accused, the complainant should have preferred an appeal under section 378 (4) of the Code of Criminal



Procedure. Now this revision is treated as an appeal and disposed of.

2. The parties are referred with respect to their positions in the court of Magistrate.

3. The cheque dated 10.02.2015 for ₹ 8,00,000/- said to have been issued by the accused for discharging the loan lent by the complainant to him was dishonoured for insufficiency of funds in his bank account and consequently the complainant initiated action under section 200 Cr.P.C. for the offence under section 138 of N.I. Act after issuing demand notice. The Magistrate convicted and sentenced him to fine of ₹ 8,80,000/-. In the appeal preferred by the accused, the Sessions Court reversed the judgment of conviction and acquitted him.

4. If the judgment of the Magistrate is read, it appears that she inferred the existence of legally enforceable debt by drawing presumption under section 139 of N.I. Act, and also held that the accused failed to



probabalize his defence that the cheque in question had been issued as security in relation to a chit transaction. The Magistrate also arrived at a conclusion that the complainant possessed sufficient means to lend a sum of ₹ 8,00,000/- to the accused, and this conclusion was drawn rejecting the other defence of the accused that the complainant was not financially capable to lend money.

5. On reassessment of evidence, the Sessions Court, in order to reverse the judgment of conviction, declined to draw presumption under section 139 of N.I. Act giving findings that complainant not only failed to produce evidence in regard to transaction of lending money to the accused but also found improbability in the complainant having lent a huge sum of ₹ 8,00,000/- without any document, and conversely the Sessions Court found probability in the defence version that the complainant had misused the cheque which was issued as security in a chit transaction.



6. The argument of Sri. Pavana Chandra Shetty, learned counsel for the complainant, is that the findings of the Sessions Court are erroneous for the reasons that the complainant was capable of lending money in as much as he possesses 18 acres of landed property and had yearly income of ₹ 8,00,000/- to ₹ 9,00,000/- at the time when he lent money to the accused. That apart the accused did not deny his signature on the cheque and thereby a presumption would arise in favour of the complainant that accused issued the cheque to discharge his debt. The defence version is improbable. He also produced RTC extract of the land standing in the name of the complainant. Sri. Pavana Chandra Shetty argued for restoring the judgment of conviction passed by the Magistrate.

7. Sri. Chetan, learned advocate for the accused, has argued that the complainant's case can be dislodged for the improbabilities in his case itself, let alone the defence version. The complainant has not disclosed the



date on which he lent money to the accused. The notice-Ex.P3 does not disclose the transaction which is stated in the complaint. Only in the cross-examination he gives some date of lending money to the accused. The evasive answers given by him in the cross-examination are by themselves enough to disbelieve his case. If the Sessions Court re-appreciated the evidence and its conclusions do not appear to be perverse, there is no scope for interference in an appeal against acquittal judgment.

8. If the evidence is reassessed again the obtaining picture is this. The pleas found in the complaint are that the accused borrowed a sum of ₹ 8,00,000/- from him to meet his domestic necessities and to discharge hand loans, that the accused assured of repaying the loan in a month and when the complainant asked the accused of repayment, the latter issued a cheque dated 10.02.2015 for ₹ 8,00,000/- drawn on the Canara Bank, Sakaleshpura Branch. The complainant has also stated about dishonour of the said cheque for want of sufficient funds in the bank



account of the accused, and the latter's failure to comply with demand made in his notice after the cheque was dishonoured. The complainant who adduced evidence as PW1 reiterated the contents of the complaint in his affidavit filed in lieu of examination in chief. In the cross-examination, he denied the suggestion about a chit transaction between his second son and the accused. And when questioned specifically about the date of lending money to the accused he gave the date 02.01.2015, and admitted that there was no document that would evidence lending of money, but he denied the suggestion that he had not stated in his notice about the purpose for which he lent money to the accused. It is to be noted here that when he was questioned about the chit transaction between his second son and the accused, and issuance of two cheques and two stamp papers for ₹ 100/- and ₹ 200/-, he did not deny them rather gave evasive answer stating that he did not know about it. He feigned ignorance of pendency of suit for specific performance, O.S.77/2015 filed by his son against the accused by



misusing the stamp papers. His another denial answer is about a complaint filed by his son's friend, Harish against the wife of the accused for the offence under section 138 of N.I. Act by making use of another cheque.

9. The evidence of the accused, DW1 is on the lines of defence introduced in the cross-examination of PW1. Another defence witness is DW2 Shantharaju, who stated that there existed a chit transaction between the son of the complainant and the accused, that the complainant's son had collected blank cheques and blank stamp papers towards security, that when the accused requested the complainant's son to return the cheques and stamp papers after the chit transaction was over, the latter altercation with the accused in relation to which an FIR was registered and then charge sheet was filed. He has also stated that the complainant had misused the blank cheques. The answers elicited from DW2 in his cross-examination are not so relevant, as it can be demonstrated that the



complainant's case should fail on its own, let alone the evidence of DW2.

10. Ex.P3 is the notice issued by the complainant's advocate to the accused after the cheque, marked Ex.P1 was dishonoured. In the notice, nothing is stated about the loan transaction which the complainant has referred to in his complaint. The notice simply states that cheque for ₹ 8,00,000/- issued by accused was dishonoured on its presentation before the bank for encashment and thereafter the accused was called upon to make payment of cheque amount with interest at the rate of 18% within fifteen days of receiving notice or else legal action would be initiated.

11. Now if the complaint and the notice, Ex.P3 are juxtaposed, it becomes very clear that the complainant stated about loan transaction for the first time in his complaint. And in the complaint he has not given the approximate time of transaction, only in the cross-examination he states that on 02.01.2015 he gave money



to the accused in his house without obtaining any document from the accused. The amount lent by him was ₹ 8,00,000/-, not a small amount. What is to be noted here is that if the complainant was aware that the accused wanted money for his family necessities and to discharge loan and for that reason only the accused borrowed money from him, he could have stated about that transaction and the date of lending of money in the notice itself. Ex.P3, the legal notice is silent about the transaction. In the complaint also, the date of lending of money is not mentioned, and only in the cross-examination he discloses the date. In a situation like this, can the court resort to drawing presumption under section 139 of N.I. Act, is the question. Section 139 reads as below:

"139. Presumption in favour of holder.— It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."



12. The expression, “for the discharge, in whole or part, of any debt or other liability” is very important. That means the complainant, i.e., the holder of a cheque must disclose in the first instance in his demand notice the transaction that gives rise to debt or other liability to be discharged and then the same must be stated in the complaint also. Once such a disclosure is made and primary foundation is led in evidence, presumption can be drawn. To put it in other words, presumption can be drawn only in respect of disclosed or stated transaction, not undisclosed transaction. Mere acceptance of signature on the cheque by its drawer does not lead to presumption if the transaction engendering the liability is not stated. Since presumption to be drawn under section 139 leads to fastening criminal liability on the drawer of the cheque, the complainant cannot rest expecting the court to draw presumption in his favour without disclosing the transaction.



13. As a corollary to this, in order to hold the defence version probable, the drawer of the cheque must come out with his defence in his reply notice, and any defence introduced for the first time either at the time when complainant or his witnesses are cross examined or when he leads evidence does not carry as much weight as it carries if there was disclosure at the earliest point of time i.e., before the criminal action is initiated.

14. Harking back, the accused issued reply to demand notice as per Ex.P.5 and therein he stated about the chit transaction between him and the son of the accused, and possibility of the cheque issued by him by way of security being misused. Though his another stand that his signature might have been forged is difficult to be accepted, the other specific defence relating to chit transaction appears to be probable, and assumes higher degree of probability if the evasive answers given by PW1 in the cross-examination are considered. The complainant and the accused are not strangers, they had a long



acquaintance with each other. Another complaint filed by one Harish against the wife of accused and a suit for specific performance filed by the son of the complainant against the accused, which are otherwise irrelevant, assume contextual relevancy. Therefore, the conclusion is that the Sessions Court is justified in acquitting the accused. There is no merit in the appeal. Appeal is dismissed.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

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List No.: 1 Sl No.: 1