MANU/KA/0395/2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

Criminal Appeal No. 1197 of 2013 (A)

Decided On: 09.02.2024

G.E. Ramesh **Vs.** B.P. Umashankar

Hon'ble Judges/Coram:
Anil B. Katti, J.

Counsels:
For Appellant/Petitioner/Plaintiff: Nagesh M.V. Patil and B.S. Prasad, Advocates

For Respondents/Defendant: S.B. Totad, Advocate

Case Category:
CRIMINAL MATTERS - MATTERS CHALLENGING PROSECUTION UNDER NEGOTIA INSTRUMENTS ACT

JUDGMENT

Anil B. Katti, J.

1. Appellant/complainant feeling aggrieved by judgment of First Appellate Court on the file of I Addl.Sessions Judge, Shivamogga in Crl.A. No. 72/2013, dated 02.12.2013 in reversing the judgment of Trial Court on the file of JMFC II, Shivamogga, in C.C. No. 952/2010, dated 13.03.2013 convicting the accused for the offence under Section 138 of N.I.Act preferred this appeal.

2. Parties to the appeal are referred with their ranks as assigned in the Trial Court for the sake of convenience.

3. Heard the arguments of both sides.

4. After hearing arguments of both sides and on perusal of Trial Court records, so also the impugned judgment under appeal, the following points arise for consideration:

1) Whether the impugned judgment under appeal passed by First Appellate Court is perverse, capricious and legally not sustainable?

2) Whether interference of this Court is required?

5. On careful perusal of oral and documentary evidence placed on record, it would go to show that complainant and accused are known to each other since many years. Accused is the paddy merchant, he use to purchase paddy from him. Accused has purchased 200 quintals of paddy by name 'savirada ondu' from complainant on 14.11.2009. Accused in order to discharge legally enforceable debt issued cheque bearing No. 024183 dated 06.11.2009 for Rs. 2,00,000/-drawn on UTI bank Ltd. Shivamogga Ex.P.1. Complainant presented the said cheque through his banker Indian Overseas bank, Shivamogga and the said cheque was dishonoured vide bank endorsement as "Payment stopped by the drawer" dated 21.01.2010 Ex.P.2. Complainant issued demand notice dated 01.02.2010 Ex.P.3 through RPAD and postal receipt is produced at Ex.P.5 and the acknowledgement

card for having served the demand notice to accused vide Ex.P.6. Accused has replied to said demand notice issued by complainant by reply notice dated 11.02.2010 Ex.P.7. Complainant has also produced RTC extract Exs.P.8 to 10 to show that paddy crop is being grown in the said agricultural land. If the aforementioned documents are perused and appreciated with the evidence of PW.1, then it would go to show that complainant has complied all the legal requirements in terms of Section 138 (a) to (c) of Negotiable Instruments Act, 1881 (hereinafter for brevity referred to as "N.I.Act"). Complainant has filed the complaint on 19.02.2010 within a period of one month from the date of accrual of cause of action in terms of Section 142 (1) (b) of N.I.Act. Therefore, when issuance of cheque with signature of accused on the account maintained by him is proved by the evidence on record then statutory presumption in terms of Section 118 and 139 of N.I.Act will have to be drawn in favour of complainant.

6. In this context of the matter, it is useful to refer the judgment of Hon'ble Apex Court in APS Forex Services Pvt. Ltd. Vs. Shakti International Fashion Linkers and others reported in MANU/SC/0179/2020 : 2020:INSC:195 : AIR 2020 SC 945, wherein it has been observed and held that once the issuance of cheque with signature on cheque is admitted, there is always a presumption in favour of complainant that there exist legally enforceable debt or liability. Plea by accused that cheque was given by view of security and same has been misused by complainant is not tenable.

7. It is also profitable to refer another judgment of Hon'ble Apex Court in P. Rasiya vs. Abdul Nazer and another reported in MANU/SC/1521/2022, wherein it has been observed and held that:-

> "Once the initial burden is discharged by the complainant that the cheque was issued by the accused and signature of accused on the cheque is not disputed, then in that case, the onus will shift upon the accused to prove the contrary that the cheque was not for discharge of any debt or other liability. The presumption under Section 139 of N.I. Act is statutory presumption and thereafter, once it is presumed that the cheque is issued in whole or in part of any debt or other liability which is in favour of the complainant/holder of the cheque, in that case it is for the accused to prove the contrary."

In view of the principles enunciated in the aforementioned two judgments of Hon'ble Apex Court, it is evident that when once issuance of cheque with signature of accused on the account maintained by him is admitted or proved then statutory presumption in terms of Section 118 and 139 of N.I. Act will have to be drawn.

8 . It is the specific defence of accused that he has not purchased paddy from complainant and not issued the cheque Ex.P.1 for lawful discharge of debt. It is further defence of accused that he has lost the signed cheque on 18.01.2010 and filed the complaint. In this regard filed complaint before the town Police Station Shikaripura Ex.D.3 and police issued endorsement Ex.D.4 on the same day. Complainant also given stop payment instruction to the bank not to honour the cheque bearing No. 24183. Accused to probabilise the said defence apart from relying on the material produced by complainant also relied on his own evidence as DW.1 and the documents Exs.D.1 to 5.

9 . Learned counsel for accused in support of his contention that complainant has no financial capacity to pay the amount covered under the cheque Ex.P.1 relied on the Co-ordinate Bench Judgment of this Court in Shivappa Shivanand s/o Mallappa Nirani Vs. Chidanand s/o Hanamantappa Sikkeri in Crl.A. No. 100267/2019, dated 23.01.2024. In the said case before this Court complainant has failed to prove that he had capacity to

lend the amount of Rs. 20,00,000/-to the accused, since no any material evidence was produced to that effect. Reliance is also placed on another Co-ordinate Bench Judgment of this Court in T.Karthik Raja Vs. V.M.Prabhakar in Crl.P. No. 578/2017 dated 08.01.2021, wherein it has been observed and held in para 21 as under:

> " Under Section 138 of the NI Act, once the cheque is issued by the drawer, a presumption under Section 139 of the NI Act in favour of the holder would be attracted. Section 139 creates a statutory presumption that a cheque received in the nature referred to under Section 138 of the NI Act is for the discharge in whole or in part of any debt or other liability. The initial burden lies upon the complainant to prove the circumstances under which the cheque was issued in his favour and the same was issued in discharge of a legally enforceable debt. It is for the accused to adduce evidence in relation to such facts and circumstances to rebut the presumption that such debt does not exist or that the cheque is not supposed by consideration".

The statute itself place initial burden on the complainant to prove that cheque in question was drawn for lawful discharge of debt. Once if the initial burden is discharged by the complainant then the onus shift on the accused to prove that there was no any legally enforceable debt covered under the cheque Ex.P.1.

10. Learned counsel for accused has vehemently argued that accused is not a paddy merchant and there was no occasion for him to purchase the 200 quintal of paddy from complainant. The RTC extract Exs.P.8 to 10 would go to show that only three acres of land is standing in the name of complainant. Therefore, there was no any legally enforceable debt to issue cheque in question dated 16.11.2009 Ex.P.1. Complainant in the complaint averments and during the course of his evidence has deposed to the effect that accused has purchased 200 quintal of paddy by name 'Savirada Ondu' on 14.11.2009. In order to discharge the said legally enforceable debt issued the cheque in question Ex.P.1 for Rs. 2,00,000/-. It is not obligatory on the part of complainant to enquire as to whether accused possesses any license for purchase or sale of paddy and whether he owned any shop for the said business. The RTC extract produced by complainant Exs.P.8 to 10 would go to show that the family members possesses the requisite extent of land wherein paddy crop is being grown. The mere denial of transaction by accused cannot be said as sufficient evidence to discredit the evidence of PW.1 that cheque in question Ex.P.1 was issued for lawful discharge of debt.

11. In this context of the matter it is useful to refer the judgment of the Hon'ble Apex Court in Rangappa Vs. Mohan reported in MANU/SC/0376/2010 : 2010:INSC:289 : AIR 2010 SC 1898 wherein it has been observed and held as under :

> *"xxxx The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the court may either believe that the consideration did not exist or its non-existence was to probable that a prudent man would, under the circumstances of the case, act upon the plea that it did not exist."*

(Emphasis supplied)

This judgment has been considered in subsequent judgment of Hon'ble Supreme Court in Anss Rajshekar Vs. Augustus Jeba Ananth reported in MANU/SC/0147/2019 :

2019:INSC:59 : (2020) 15 SCC 348 and has held that "a mere denial of transaction or an omnibus denial of the entire transaction could not be considered as a tenable defence". In view of the principles enunciated in both the aforementioned judgments of Hon'ble Apex Court, it is evident that mere denial of transaction by accused cannot be said as sufficient rebuttal evidence to discredit the evidence of PW.1.

12. The next main contention of accused is that accused has lost the cheque duly signed by him and accordingly he has filed complaint before town Police Station Shikaripura Ex.D.3 on 18.01.2010 and police issued endorsement dated 18.01.2010 Ex.D.4. Accused on receipt of demand notice dated 01.02.2010 Ex.P.3 has replied Ex.P.7 dated 11.02.2010 and made foundation regarding the loss of cheque and filed complaint on 18.01.2010 Ex.D.3 and issuance of police endorsement on the same day Ex.D.4.

13. Learned counsel for complainant has vehemently argued that if the defence of accused is to be accepted relying loss of cheque then evil consequences will follow and allow everybody to make such claim of loss of cheque after issuing the cheque for lawful discharge of debt. Complainant has reasonably explained as to how he came in possession of cheque Ex.P.1 on 16.11.2009 which was issued by accused for lawful discharge of debt.

14. Per contra, learned counsel for accused has argued that the stop payment instruction to the bank was given on 12.01.2010 itself. Complainant has filed the complaint Ex.D.3 on 18.01.2010 for having loss of cheque and accordingly town Police Station Shikaripura had issued endorsement on the same day Ex.D.4. Accused has made known his defence by making foundation in reply to demand notice Ex.P.7 (the copy of reply notice is also produced by accused Ex.D.1). Complainant has specifically pleaded that accused has purchased 200 quintal of paddy worth Rs. 2,00,000/-on 14.11.2009. Accused has issued cheque Ex.P.1 on 16.11.2009 for lawful discharge of said debt. There is time gap of more than two months from the date of issuance of cheque Ex.P.1 dated 16.11.2009 and the date of complaint being filed by accused on 18.01.2010 Ex.D.3. Accused has not offered any explanation or brought on record the circumstances made him to carry the cheque dated 16.11.2009 to the date on which he lost the cheque on 18.01.2010. Accused in Ex.D.3 has wisely shown only the cheque No. 024183 and claims that he has signed the cheque to the front and back. Accused has not stated anything in the reply notice Ex.P.7 as to whether the cheque signed by him was duly filled or not with the different date appearing on Ex.P.1. It is only stated by accused that he has lost the signed cheque on 18.01.2010 and the complainant has misused the said cheque to file this false case. If the evidence of accused DW.1 and the contention raised in the reply notice Ex.P.7 is to be accepted, then according to accused complainant was unknown to him. Therefore, there is no question of complainant misusing the cheque of accused which he claims to have lost on 18.01.2010 vide Ex.D.3. Accused has also failed to bring any material evidence in the cross-examination of PW.1 that complainant had any ill will or motive against accused which prompted him to misuse the said cheque Ex.P.1 which accused claims to have lost on 18.01.2010. It is also pertinent to note that accused has not taken any action against the complainant even after coming to know that he has misused the cheque and filed this false case.

15. The evidence placed on record by accused and the material elicited in the cross-examination of PW.1 would go to show that bank has issued endorsement Ex.P.2 as "payment stopped by the drawer". The said endorsement is essentially after the accused having filed the complaint for loss of cheque on 18.01.2010 Ex.D.3. Accused has produced computer generated address Ex.D.2 which goes to show that the stop

payment instruction was received from accused on 12.01.2010 at 17:12:59. It means that six days prior to the filing of complaint Ex.D.3 for loss of cheque, stop payment instruction was given to the bank on 12.01.2010. If at all accused has really lost the cheque on 18.01.2010 then he should have issued necessary intimation to bank to stop payment either on 18.01.2010 or to the subsequent said date. How can accused presupposes that the cheque in his possession will be lost on 18.01.2010, so that he can give advance intimation to the bank on 12.01.2010 to stop payment of the cheque bearing No. 24183. This conduct of accused would demonstrate the fact that accused only with an intention to prevent the complainant from receiving the legally enforceable debt covered under Ex.P.1 has planned to file the complaint on 18.01.2010 claiming that he has lost the cheque bearing No. 21483 and filed complaint Ex.D.3 before town Police Station Shikaripura and on the same day obtains the endorsement of town Police Station Shikaripura Ex.D.4. However the truth has come out from the own document of accused Ex.D.2 that stop payment instruction was given on 12.01.2010 much prior to six days of complainant having lost the cheque on 18.01.2010 Ex.D.3. The balance standing in the account of accused is shown as Rs. 3,470.40/-. It means that accused was aware that he has no sufficient funds in his account and cheque will be dishonoured. Therefore, in order to cover such latches and escaping from the clutches of Section 138 of N.I.Act has executed is plan of having lost the cheque on 18.01.2010 Ex.D.3. Therefore, in view of the reasons stated above the evidence of DW.1 and the documents Exs.D.3 and 4 cannot be relied to prove that in fact the accused has lost the cheque on 18.01.2010 and filed complaint Ex.D.3 and on the same day police issued endorsement Ex.D.4. Thus, the accused has failed to probabilise his defence to displace the statutory presumption available in favour of complainant.

16. The Trial Court has rightly appreciated the evidence placed on record and has arrived to a just and proper conclusion in holding that the cheque issued by accused No. 1 for lawful discharge of debt. The accused only with an intention to escape from the clutches of penal action under Section 138 of N.I.Act has planned to file false complaint of having lost the cheque and filed complaint Ex.D.3. The Trial Court was justified in negating the claim of accused that the lost cheque of accused was misused by complainant to file this case. However, the First Appellate Court without assigning valid reasons for deviating from the finding recorded by the Trial Court only on the basis of complaint filed by accused having lost the cheque on 18.01.2010 Ex.D.3 and the endorsement issued by police on the same day Ex.D.4 which is prior to presentation of the cheque by complainant for collection on 21.01.2010 through his banker has proceeded to hold that accused has probabilised his defence. The said finding recorded by the First Appellate Court is contrary to evidence on record and the same cannot be legally sustained.

17. When the rebuttal evidence placed on record by accused is held to be unsustainable in law and accused has failed to probabilise his defence, then the statutory presumption in terms of Section 118 and 139 of N.I.Act will continue to operate in favour of complainant. The Trial Court has rightly appreciated the evidence on record and justified in convicting the accused for the offence under Section 138 of N.I.Act.

18. The question now remains is imposition of sentence. The Trial Court has convicted the accused and sentenced to undergo rigorous imprisonment for a period of 2 years and shall pay a fine of Rs. 4,00,000/-and in default of payment of fine shall undergo further rigorous imprisonment for a period of 3 months, out of the total fine amount a sum of Rs. 3,90,000/-was ordered to be paid as compensation to complainant.

19. In this context of the matter, it is useful to refer the judgment of Hon'ble Apex

Court in the case of Somnath Sarkar vs. Utpal Basu Mallick and another reported in MANU/SC/1035/2013 : 2013:INSC:686 : (2013) 16 SCC 465 wherein, the Hon'ble Apex Court has held that:

> "14. This Court also took note of the number of cases involving dishonour of cheques choking the criminal justice system of this country, especially at the level of the Magisterial Courts, and held that dishonour of cheque being a regulatory offence, aimed at ensuring the reliability of negotiable instruments, the provision for imprisonment extending up to two years was only intended to ensure quick recovery of the amount payable under the instrument. The following passages from the decision are in this regard apposite: (Damodar S. Prabhu case, SCC p.666 paras 4-5)
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> > "4. ... It is quite evident that the legislative intent was to provide a strong criminal remedy in order to deter the worryingly high incidence of dishonour of cheques. While the possibility of imprisonment up to two years provides a remedy of a punitive nature, the provision for imposing a 'fine which may extend to twice the amount of the cheque' serves a compensatory purpose. What must be remembered is that the dishonour of a cheque can be best described as a regulatory offence that has been created to serve the public interest in ensuring the reliability of these instruments. The impact of this offence is usually confined to the private parties involved in commercial transactions.
> >
> > **5 .** Invariably, the provision of a strong criminal remedy has encouraged the institution of a large number of cases that are relatable to the offence contemplated by Section 138 of the Act. So much so, that at present a disproportionately large number of cases involving the dishonour of cheques is choking our criminal justice system, especially at the level of Magistrates' Courts. As per the 213th Report of the Law Commission of India, more than 38 lakhs cheque bouncing cases were pending before various courts in the country as of October 2008. This is putting an unprecedented strain on our judicial system."

The Hon'ble Apex Court having referred the said finding has observed and held that Statute provide for imposition of imprisonment was only intended to ensure quick recovery of the amount payable under the instrument. It has been further held that the legislative intent was to provide a strong criminal remedy in order to deter the worryingly high incidence of dishonour of cheques. While the possibility of imprisonment up to two years provides a remedy of a punitive nature, the provision for imposing a 'fine which may extend to twice the amount of the cheque' serves a compensatory purpose. What must be remembered is that the dishonour of a cheque can be best described as a regulatory offence that has been created to serve the public interest in ensuring the reliability of these instruments. The impact of this offence is usually confined to the private parties involved in commercial transactions.

20. In view of the principles enunciated in this decision and the object of legislature in incorporating the provision for punishment for offence under Section 138 of N.I. Act is to ensure the credibility of the money involved covered under the cheque. The Court will have to take into consideration the nature of transaction involved, the evidence placed on record and other attending circumstances. Imposition of maximum sentence of 2 years imprisonment and double of the cheque amount is not mandatory in all the cases. The Court has to exercise it's judicial discretion in imposing the sentence and the

sentence imposed must be proportionate to the proved guilt of accused. Looking to the facts and circumstances of the case if the accused is sentenced to pay fine of Rs. 2,20,000/-and in default of payment of fine sentenced to undergo simple imprisonment of 6 months is ordered will meet the ends of justice. Consequently proceed to pass the following:

ORDER

Appeal filed by appellant/complaint is hereby allowed.

The judgment of First Appellate Court on the file of I Addl. Sessions Judge, Shivamogga in Crl.A. No. 72/2013, dated 02.12.2013 is hereby set aside.

The judgment of Trial Court on the file of JMFC II, Shivamogga, in CC. No. 952/2010, dated 13.03.2013 is hereby ordered to be modified as under:

Accused is convicted for the offence under Section 138 of N.I.Act and sentenced to pay a fine of Rs. 2,20,000/-and in default of payment of fine shall undergo simple imprisonment for a period of 6 months.

In view of the exercise of power under Section 357 of Cr.P.C. out of the fine amount Rs. 2,10,000/-is ordered to be given to complainant as compensation and remaining Rs. 10,000/-is ordered to be defrayed as prosecution expenses.

Registry to send back the records to Trial Court with a copy of this order.

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