

N. Jaffer Sab Vs. Vishwanatha

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Court : Karnataka

Decided On : Jan-31-2017

Judge : R.B. Budihal

Appeal No. : Criminal Revision Petition No. 774 of 2015

Appellant : N. Jaffer Sab

Respondent : Vishwanatha

Judgement :

(Prayer: This Criminal Revision Petition is filed under Section 397 read with Section 401 Cr.P.C praying to set aside the judgment dated 05.01.2015 passed by the P.O., F.T.C., Shivamogga in CrI.A.No.107/2013 and set aside the conviction Judgment in C.C.No.2127/2009 dated 15.04.2013 by the II Addl. C.J. and J.M.F.C., Shivamogga for the offence punishable under Section 138 of N.I. Act.)

1. This revision petition is preferred by the revision petitioner-accused challenging the legality and correctness of the judgment and order dated 15.4.2013 passed by the II Additional Civil Judge and JMFC, Shivamogga in C.C. No.2127/2009 and the judgment and order dated 05.01.2015 passed by the Fast Track Court, Shivamogga in CrI. Appeal No.107/2013.

2. Brief facts of the case of the respondent- complainant before the trial Court is that a private complaint was filed alleging that the revision petitioner- accused committed an offence punishable under Section 138 of the N.I. Act. The

respondent-complainant and the petitioner-accused were known to each other from several years and on that acquaintance, the petitioner approached the respondent for the financial assistance to the tune of Rs.1,50,000/-. After much persuasion, the respondent advanced a sum of Rs.1,50,000/- to the petitioner on 02.10.2006 as loan by way of cash. At the time of receiving the loan, the petitioner herein agreed to repay the same within two months and also agreed to pay interest. But the petitioner neither paid the principal amount nor the interest and requested him for further time. Thereafter, the respondent again approached the petitioner asking for repayment and ultimately, in the second week of May 2007, the petitioner voluntarily issued a cheque dated 22.05.2007 for Rs.1,50,000/- agreeing to pay interest in future. But on presentation of the cheque on 22.05.2007, the same was returned dishonored for want of sufficient funds.

3. Though this matter was posted number of times, learned Counsel appearing for the petitioner was not present. Even today also, when the matter is called, there is no representation for the petitioner. Both the petitioner and learned Counsel for the petitioner are absent. Learned Counsel for the respondent is present.

4. Heard the learned Counsel for the respondent- complainant.

5. I have perused the judgment and orders passed by the trial Court so also the first appellate Court.

6. Looking to the materials placed on record, after dishonour of the cheque, the respondent-complainant issued a legal notice which was served on the revision petitioner-accused and the accused has also sent reply to the said notice. Looking to the defence taken by the accused, he denied the borrowing of loan and issuance of the cheque. It is his contention that when he was shifting his house and as he kept the signed blank cheque, the same was misused and taking undue advantage of the same, the complainant has filed the case. It is also his contention that there was no date as such on the cheque. Hence sought for dismissal of the complaint.

7. Perusing the judgment and order of the trial Court, it has discussed the oral and documentary evidence of the complainant so also made reference to Exs.P.1 to

P.7 and also the oral evidence of D.W.1.

8. Looking to the observation made by the trial Court, in its judgment, it is observed at page No.9 of the said judgment that the accused has taken three inconsistent and contradictory defences. It is further observed that even if each of the three defences are taken into consideration, they were not probablised by the accused. In order to rebut the presumption available in favour of the complainant under Sections 118 and 139 of the N.I. Act, the accused must be probable, definite and certain. It is further observed by the trial Court that at one stretch, the accused has contended that he delivered the cheque (Ex.P.1) to father of the complainant. In another stretch, he has contended that it was received by the complainant as security towards the chit business. In the later stage of the evidence, the accused has stated that he had lost the signed blank cheque at the time of shifting his house and it is misused by the complainant.

9. Looking to the judgment and order of the trial Court, it has referred to each and every aspect of the matter, discussed about the oral and documentary evidence and rightly came to the conclusion in holding that the complainant has proved its case that the accused has committed the offence punishable under Section 138 of the N.I. Act.

10. I have perused the judgment of the first appellate Court. The first appellate Court has also discussed about the evidence placed before it and it has concurred with the finding recorded by the trial Court holding that no illegality has been committed by the trial Court in convicting the accused. Looking the judgment and order of the Courts below, there are concurrent findings regarding the factual aspect. With regard to the legal aspect is concerned, the accused has not made out the case. In the absence of such illegality, there is no need for this Court to interfere with the judgment and orders of the Courts below. I find no merit in this revision petition. It is accordingly dismissed. The amount deposited by the revision petitioner-accused be transferred to the concerned trial Court.