

P. Sethumadhavan Vs. Shankar Reddy

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Court : Karnataka

Decided On : Jul-27-2017

Judge : The Honourable Mrs. Justice Rathnakala

Appeal No. : Criminal Revision Petition No. 1181 of 2010

Appellant : P. Sethumadhavan

Respondent : Shankar Reddy

Judgement :

(Prayer: This Criminal Revision Petition is filed under Section 397 and 401 of Cr.P.C., praying to set aside the Order Dt.28.7.2010 passed by the P.O., FTC-IX, Bangalore in CrI.A.805/2008 and confirming the Order Dt.11.09.2008 passed by the I/C Of XX ACMM and XXII ASCJ, Bangalore in C.C.No.8439/2004, to acquitted the petitioner for the offence P/U/S 138 of N.I. Act.)

1. The petitioner is challenging the order of the court below whereby he was convicted of the offence under Section 138 of the Negotiable Instruments Act and his conviction was upheld by the Appellate Court.

2. The parties will be referred to as per their original status before the Trial Court.

3. To put the facts into a nutshell, the complainant filed a private complaint under Section 200 of Cr.P.C. alleging that he entered into an agreement with the accused on 20.5.2002 to purchase 50 sites. The accused requested for

Rs.4,50,000/- to complete the sale transaction with assurance to return the amount within one month after completion of the sale deed. After registration of the sale deed in favour of the accused and his friend, he did not pay the amount and demanded additional amount. He issued a cheque bearing No.357448 dated 25.6.2003 towards loan amount of Rs.4,50,000/- drawn on Indian Overseas Bank, Residency Road Branch, Bangalore. The cheque when presented, returned with the endorsement "payment stopped by the drawer" on 18.11.2003. The complainant issued a legal notice on 28.11.2003 both by RPAD and UCP. Notice is duly served on him and the accused sent his untenable reply on 6.12.2003. The complainant issued a rejoinder on 16.12.2003. Still he has not paid the amount.

4. The learned Magistrate recorded the sworn statement of the complainant, took cognizance of the offence, procured the accused, accusation was read over and he pleaded not guilty. The trial commenced.

5. The complainant examined himself as PW-1 and got marked documents as per Ex.P1 to P9. Two witnesses were examined on behalf of the defence as DW-1 and DW- 2 and documents Ex.D1 to D3 were marked. The documents produced during the evidence of the handwriting expert was marked as Ex.C1.

6. The Trial Court on consideration of the entire evidence and material on record, held that the petitioner has committed the offence under Section 138 of the N.I. Act and sentenced him to pay fine of Rs.6,10,000/- with default clause.

7. The appeal preferred thereon did not succeed.

8. Learned counsel for the petitioner submits that the accused in fact had repaid the amount and an agreement was entered into between the parties on 20.5.2002. In pursuance of the same, on receiving the amount, he had issued a receipt Ex.D1. Even now, on a bare perusal of the disputed signature on the receipt with the admitted signature of the complainant borne from the record, signatures tally.

9. Learned counsel for the respondent-complainant would submit that no such agreement was produced by the accused either during the cross examination of PW-1 or during the rebuttal evidence. Complainant had out rightly rejected the

signature on Ex.D1 and the same was referred to the hand writing expert and the hand writing expert was examined as DW-2 and he was thoroughly cross examined by the accused and the accused failed to prove the receipt Ex.D1. No such agreement by the petitioner before this Court was produced during his evidence. Signature on the cheque having been disputed, the courts below on appreciation of the evidentiary material, have found the petitioner guilty of the offence. Hence, the revision petition is liable to be rejected.

10. In the light of the above submissions and on perusal of the judgment impugned along with lower court records, it settles to the point that the cheque in question was issued by the accused towards outstanding liability. The only issue being discharge of the said liability under the receipt Ex.D1 after the parties entered into agreement.

11. Unfortunately the oral submission made on behalf of the accused that parties entered into agreement is not corroborated by the documentary proof. No such agreement between the parties is produced. Ex.D1 the receipt dated 25.8.2003 is subjected for examination by a hand writing expert who is none other than Asst. Director of F.S.L. Bangalore. During his evidence he has categorically stated that the disputed signature does not tally with the admitted signature and the same varies. The crucial part of cross examination of this expert is recorded in question and answer by the Trial Court giving no room to doubt the veracity of his evidence. The Trial Court on consideration of the difference, has found no merit and held that the accused has not discharged his liability.

12. The lower Appellate Court on independent appreciation of the evidence and on consideration of the difference offered, has upheld the findings of the Trial Court. The orders of the courts below are proper and do not warrant revisional jurisdiction of this court.

Hence, the petition is dismissed.

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