

K Lokesh vs K S Kumar

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Court : Karnataka

Decided On : May-29-2024

Judge : V Srishananda

Appeal No. : CRL.RP/272/2021

Appellant : K Lokesh

Respondent : K S Kumar

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF MAY, 2024 BEFORE THE HON'BLE MR JUSTICE V SRISHANANDA CRIMINAL REVISION PETITION NO. 272 OF 2021 BETWEEN: K. LOKESH, S/O KUNTEGOWDA, AGED ABOUT 55 YEARS, R/AT N.M. ROAD, PANDAVAPURA TOWN, MANDYA DISTRICT - 571 435. PETITIONER (BY SRI. LOKESH MALAVALLI, ADVOCATE) AND: K.S. KUMAR, S/O SAMBULINGEGOWDA, AGED ABOUT 33 YEARS,

Digitally R/AT KANGANMANDI VILLAGE, signed by KASABA HOBLI, PANDAVAPURA TQ, MALATESH KC MANDYA DISTRICT - 571 435. Location:

RESPONDENT HIGH COURT OF (BY SRI. D. SRISHAILA, ADVOCATE FOR KARNATAKA SRI. D.R. RAJASHEKARAPPA, HCGP) THIS CRL.RP IS FILED U/S.397 R/W 401 OF CR.P.C PRAYING TO SETTING ASIDE JUDGMENT AND ORDERS OF CONVICTION DATED 03.11.2020 PASSED IN CRL.A.NO.5044/2019 BY THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, MANDYA (SITTING AT SRIRANGAPATNA) -2- THEREBY DISMISSING THE APPEAL FILED BY THE PETITIONER

AND CONFIRMING THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 21.08.2019 PASSED IN C.C.NO.685/2018 BY THE LEARNED ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, PANDAVAPURA THEREBY CONVICTING THE PETITIONER FOR THE OFFENCES P/U/S 138 OF N.I ACT, SENTENCE TO UNDERGO S.I FOR A PERIOD OF 6 MONTHS AND TO PAY THE FINE OF RS.10,000 IN DEFAULT AND ALSO PAY

COMPENSATION OF RS.2,50,000 TO THE COMPLAINANT/RESPONDENT. THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This revision petition is filed challenging the order of conviction passed in C.C.No.685/2018 confirmed in Crl.A.No.5044/2019 convicting the revision petitioner for the offence punishable under Section 138 of the NI Act.

2. Facts in brief which are utmost necessary for disposal of the present petition are as under:

3. Accused issued a cheque for repayment of the agreement of sale and towards repayment of the advance amount as the agreement of the sale was cancelled. The said -3-

cheque on presentation came to be dis-honoured. Accordingly, the legal notice was issued. The notices were not accepted by the accused and the registered covers got returned with an endorsement as not claimed and thereafter complainant filed a case for punishing the accused under Section 138 of the NI

Act. The said case on contest came to be convicted and confirmed in the appeal.

4. Being aggrieved by the same, accused is before this Court in this revision petition.

5. Learned counsel for the petitioner re-iterating the

grounds urged in the revision petition, contended that both the Courts have not properly appreciated the material evidence on record and wrongly convicted the accused and sought for setting aside the order passed by both the Courts by allowing the revision petition.

6. Per contra, learned counsel for the respondent

supports the impugned judgment by contending that the issuance of cheques and the signatures found therein is not in dispute and therefore, complainant enjoys the presumption as is contemplated under Section 139 of the NI Act and there is no -4- contra evidence to rebut the said presumption and therefore, both the Courts have rightly convicted the accused and sought to dismiss the revision petition.

7. Having heard the parties this Court perused the

material on record meticulously. On such perusal of the material on record it is crystal clear that the issuance of the cheque and the signatures found therein is not in dispute.

8. Complainant got examined himself as PW1 before

the Court and relied on the documents as Exs.P1 to P8 comprising of dishonoured cheques, bank endorsement, copy of the legal notice and returned cover. As such, he has discharged the initial burden. Copy of the agreement of sale is also marked as Ex.P6 and cheque issued towards the repayment of the advance amount as found in Ex.P6.

9. To rebut the presumption available to the

complainant, for the reasons best known to the accused did not get into the witness box nor placed any documentary evidence on record. Accordingly, the learned Magistrate was justified in convicting the accused for the offence punishable under Section -5- 138 of the NI Act which has been rightly appreciated by the learned Judge in the First Appellate Court.

10. However, both the Courts have missed the point

that lis is between two private parties, and there is no scope for ordering for a sum of Rs.10,000/- as defraying expenses of the State. Accordingly, same needs interference in this revision petition.

11. Hence, the following:

ORDER

i) Revision petition is allowed in part, while maintaining the conviction of the accused for the offence punishable under Section 138 of the NI Act, amount of Rs.10,000/- is ordered to be paid as the defraying expenses to the State is hereby set aside. ii) Rest of the sentence stands unaltered. Sd/- JUDGE LDC List No.: 1
SI No.: 47, CT: BHK

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