

Nagaraj Vs. Gowramma

Nagaraj Vs. Gowramma

SooperKanoon Citation : sooperkanoon.com/378542

Court : Karnataka

Decided On : Apr-16-2004

Reported in : 2005(1)ALD(Cri)22; IV(2004)BC44; 2004CriLJ2947;
2004(4)KarLJ262

Judge : K. Ramanna, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 377, 397 and 482;
[Negotiable Instruments Act, 1881](#) - Sections 138

Appeal No. : Criminal Petition No. 20 of 2002

Appellant : Nagaraj

Respondent : Gowramma

Advocate for Def. : L.M. Pandurangaswamy, Adv. and ;C. Ramakrishna, High Court Government Pleader

Advocate for Pet/Ap. : Gangaiah, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K. Ramanna, J.

1. This petition is directed against the order dated 25-6-1999 passed by the XIII Additional Chief Metropolitan Magistrate, Bangalore, in C.C. No. 16399 of 1997 and order dated 26-9-2001 passed by the I Additional City Civil and Sessions Judge, Bangalore, in Cri. R.P. No. 239 of 1999, whereby the Additional Chief Metropolitan Magistrate, Bangalore, convicted this petitioner for an offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'the N.I. Act') and sentencing him to pay a fine of Rs. 10,000/-, in default to pay the fine amount he shall suffer S.I. for two months. Whereas, 1st Additional City Civil and Sessions Judge allowed Cri. R.P. No. 239 of 1999 filed by the respondent for inadequate sentence awarded by the Trial Court under Section 397 of the Cr. P.C. Therefore, assailing both the orders the petitioner has come up with this petition under Section 482 of the Cr. P.C. on the ground that the learned Sessions Judge exceeded his jurisdiction and exercised revisional jurisdiction provided under the Criminal Procedure Code, 1973 which amounts to abuse of due process of law and miscarriage of justice. Further, it is alleged that, though the alleged cheque, as shown in the complaint is totally different from that of cheque mentioned in the complaint but the learned Sessions Judge has not taken into consideration about the defence of this revision petitioner-accused. On this ground alone instead of dismissing the revision petition the learned Sessions Judge allowed it and enhanced the fine amount from Rs. 10,000/- to Rs. 65,000/- which is illegal, abuse of due process of law and miscarriage of justice. Hence, this petition.

2. The brief facts leading to this case are that the revision petitioner herein borrowed a sum of Rs. 60,000/- from the respondent on 6-2-1996 and executed consideration receipt agreeing to repay the same with interest within 10 months. On demand he issued a cheque dated 5-10-1996 for Rs. 60,000/-. Since the petitioner failed to pay the said amount, the respondent presented the said cheque to his Bank but it was returned with an endorsement 'insufficient funds'. Therefore, the demand notice has been issued by the respondent calling upon the petitioner to pay the said amount. Even then the petitioner failed to pay the amount. Therefore, he filed a private complaint under Section 138 of the N.I. Act. After recording the sworn statement of the respondent, the Additional Chief Metropolitan Magistrate took cognizance and issued the process. After appearance of this

revision petitioner-accused a charge was framed, thereafter the respondent examined herself as P.W. 1 and got marked the documents Exs. P. 1 to P. 5 and closed her case. But, the petitioner herein did not choose to adduce any evidence to prove his contention/defence, therefore after considering the materials placed on record the Additional Chief Metropolitan Magistrate convicted and sentence this revision petitioner to pay a fine of Rs. 10,000/-.

3. Feeling aggrieved by the said order he preferred Cri. A. No. 206 of 1999. After reappraisal of the evidence and the materials placed on record the learned Additional City Civil and Sessions Judge dismissed the appeal. In the meantime the respondent-complainant had filed Cri. R.P. No. 239 of 1999 for inadequate sentence awarded by the learned Magistrate on the accused who was convicted under Section 138 of the Negotiable Instruments Act. The learned Additional City Civil and Sessions Judge, after considering the materials placed on record enhanced the fine amount from Rs. 10,000/- to Rs. 65,000/-, in case of default of payment of fine, the sentence was also enhanced to undergo simple imprisonment from two months to 6 months.

4. Heard the arguments of the learned Counsels for the petitioner and the respondent.

5. During the course of the arguments the learned Counsel for the petitioner submitted that, even though there is no jurisdiction to entertain a revision petition filed by the respondent-complainant the learned Additional Sessions Judge, Bangalore, entertained the revision petition and enhanced the order of sentence of fine amount awarded by the Trial Court from Rs. 10,000/- to Rs. 65,000/- which is incorrect and illegal and amounts to miscarriage of justice. Therefore, the orders passed by the Trial Court convicting and sentencing him to pay a fine of Rs. 10,000/- and the enhancing of the fine by the learned Sessions Judge in Cri. R.P. No. 239 of 1999, filed under Sections 397 and 401 of the Cr. P.C., are liable to be quashed. Further, it is submitted that under Section 377(1) of the Cr. P.C. is a bar that the complainant cannot file any revision or appeal for enhancement of sentence. Therefore, the revision petition filed by the respondent is not maintainable as the Sessions Judge has no powers. Under Section 377(3) of the

Cr. P.C. an appeal lies against the inadequacy of the sentence passed by the Trial Court. Therefore, the order passed by the Trial Court as well as the learned Sessions Judge are liable to be quashed.

6. On the other hand, the learned Counsel for the respondent submitted that, in fact the Trial Court convicted this petitioner-accused for the offence punishable under Section 138 of the N.I. Act and directed him to pay a fine of Rs. 10,000/- which has been challenged by the revision petitioner before the learned Sessions Judge under Cri. A. No, 206 of 1999 which came to be dismissed. Further, it is submitted that the petitioner without challenging the order passed by the learned Sessions Judge, in criminal appeal preferred this petition under Section 482 of the Cr. P.C. which is not at all maintainable. As such there is no abuse of due process of law or miscarriage of justice therefore the present petition is liable to be dismissed in limine as it is not at all maintainable.

7. I have carefully reviewed both the orders under challenge passed by the Courts below. At first I will take up for consideration the question whether the respondent-complainant is entitled to file a revision or appeal for enhancement of sentence. Under the old Code of Criminal Procedure, 1898, there was no provision either for the State or private complainant to prefer an appeal for enhancement of sentence. But, the High Court while exercising its revisional powers was vested with the discretion to enhance the sentence passed by the subordinate Court that too after affording an opportunity to the accused of being heard. Therefore, Section 377 of the Cr. P.C., 1973, empowers the State the right of appeal against inadequacy of sentence. But, the right to file an appeal against inadequacy of sentence has not been provided or given to a private complainant.

8. In the instant case the petitioner herein has challenged the order of conviction and sentence passed by the Trial Court in Cri. A. No. 206 of 1999. After reappraisal the materials placed on record by both the parties the learned I Additional Sessions Judge by its judgment dated 21-3-2000 dismissed the appeal. But, the respondent herein who filed a private complaint for dishonour of cheque for Rs. 60,000/- preferred a revision under Section 397 of the Cr. P.C., before the I Additional Sessions Judge which came to be allowed and enhanced the sentence.

A similar contention was taken by the petitioner before the learned Sessions Judge in Cri. R.P. No. 239 of 1999. The learned Sessions Judge after considering the evidence and the materials placed on record came to the conclusion that the respondent has rightly filed a revision petition under Section 397 of the Cr. P.C. for enhancement of sentence. Under Section 397 of the Cr. P.C. equal powers are given both to the High Court as well as Sessions Court to call for and examine the records of any proceedings pending before any inferior Criminal Court within its local jurisdiction for purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed as to the regularity of any proceeding of such inferior Court. In the instant case the respondent herein has rightly preferred a revision petition before the I Additional Sessions Judge for inadequacy of sentence passed by the Trial Court. Therefore, the contention of the learned Counsel for the petitioner does not hold water.

9. Under Section 138 of the N.I. Act the order of sentence was passed by the Trial Court awarding lesser sentence even though the amount covered under the cheque was Rs. 60,000/- but the Trial Court while sentencing this petitioner-accused awarded only a fine of Rs. 10,000/-. Therefore, the respondent has rightly filed a revision petition under Section 397 of the Cr. P.C. before the learned Sessions Judge. If the complainant proves the charges levelled against the revision petitioner-accused for the offence punishable under Section 138 of the N.I. Act the Magistrate may impose the sentence or the fine double the cheque amount. Therefore, it can be said that the Magistrate misread the provisions of Section 138 of the N.I. Act while imposing the fine of Rs. 10,000/-. Therefore, under Section 397 of the Cr. P.C. the respondent has rightly filed a revision petition and the learned Sessions Judge has after appreciation of the materials placed on record enhanced the sentence of fine amount from Rs. 10,000/- to Rs. 65,000/-.

10. In the case of Rajendran v. Usha Rani, 2001(2) MWN (Cri.) (Mad.) DCC 72, wherein the Madras High Court has held that a petition under Section 482 of the Cr. P.C. is not maintainable against the order passed in revision by the Sessions Court as it amounts to second revision.

11. In view of the above, I do not find any good reasons to interfere with the orders passed by both Trial Court as well as the learned Sessions Judge.

12. Accordingly, the revision petition is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com