L. Mohan Vs. V. Mohan Naidu

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Court : Karnataka

Decided On : Jan-09-2004

Reported in : 2005(1)ALD(Cri)20; 2004CriLJ3177

Judge : K. Ramanna, J.

Acts : Negotiable Instruments Act, 1881 - Sections 138

Appeal No. : Crl. R.R. No. 263 of 2002

Appellant : L. Mohan

Respondent : V. Mohan Naidu

Advocate for Def. : M.D. Anuradha Urs, Adv. for ;C.V. Sudheendra, Adv.

Advocate for Pet/Ap. : D. Manjunath, Adv. for ;Bangalore Law Associates

Disposition : Petition dismissed

Judgement :
ORDER

K. Ramanna, J.

1. This Revision Petition is directed against the common judgment dated 24th January, 2002 passed by the 13th Additional City Civil Judge, Bangalore City in Criminal Appeal No. 16/1999. Wherefore, the learned Sessions Judge dismissed

the appeal of this revision petitioner and allowed the criminal revision petition No. 52/1999 filed by the respondent-complainant confirming the order of sentence passed by the trial Court, in imposing a fine of Rs. 40,000/-, but the compensation awarded to the complainant-respondent is enhanced to the extent of the sum of Rs. 35,000/- and the same was ordered to be paid to the complainant as compensation. Wherefore, being aggrieved by the order of dismissal of the Criminal Appeal No. 16/1999, the Revision petitioner accused has come up with this revision petition under Sections 397 and 401 of the Cr.P.C. mainly on the ground that both the trial Court and the learned Sessions Judge have not properly appreciated and analysed the evidence on record by the respondent and both the Courts have not considered the demands made by the respondent-P.W. 1 before the trial Court. It is further averred that the person who has approached the Criminal Court to prove the charge levelled against the accused beyond the reasonable doubt. Therefore, the order under Revision is liable to be set aside.

2. The brief facts leading to this case are that this Revision petitioner-accused borrowed a sum of Rs. 30,000/- in the month of December, 1993 from the complainant-respondent and issued a post dated cheque dated 23-9-1995 agreeing to repay the amount within that time and since this Revision petitioner-accused did not repaid the amount, the said cheque was presented by the respondent-complainant's Bank at Karnataka Bank, Srinagar Branch, Bangalore and the same was returned with an endorsement as Fund insufficient on 29-9-1995. Thereafter, on 5-10-1995, the respondent-complainant got issued a legal notice and the said legal notice was duly served on the revision petitioner-accused and in turn sent a reply notice dated 16-10-1995 contending that he borrowed the loan of Rs. 30,000/- from one Sri Damodhara Naidu and he repaid the same. But the said Damodhara is nowhere concerned with this transaction. In spite of granting 15 days time, the revision petitioner-accused had not repaid the amount or complied with the notice. Therefore, the respondent filed a private complaint under offence punishable under Section 138 of the Negotiable Instruments Act. After receipt of summons, the Revision petitioner appeared through his counsel. So after considering the evidence placed on record, the First Additional CMM Bangalore, by judgment dated 9th January, 1999 passed in Criminal case No. 2658/ 1996 convicted this Revision petitioner-accused for an offence punishable

under Section 138 of the Negotiable Instruments Act and sentenced him to pay a fine of Rs. 40,000/- and in default in payment of fine the accused has to undergo simple imprisonment for two months. Further, it was ordered, out of the fine amount of Rs.40,000/-, a sum of Rs. 20,000/- shall be paid to the complainant as compensation after the appeal period is over. Accordingly, the order of conviction has been challenged by the Revision petitioner-accused, before the learned Sessions Judge in Criminal appeal No. 16/ 1999 whereas the respondent-complainant filed a Revision petition i.e. Crl. Rev. Petition No. 52/1999 for enhancement of sentence. So after reappraisal of the evidence placed on record, the learned Sessions Judge dismissed the appeal and allowed the revision petition filed by the respondent-complainant.

3. Heard the arguments of the learned counsel for both the parties and perused the records. The counsel for the revision petitioner vehemently argued that the learned Sessions Judge has not properly analysed and appreciated the evidence placed on record through D.W. 1 in accepting the evidence. The revision-petitioner has issued the cheque in favour of one Damodar Naidu who is the father-in-law of the respondent. The cheques has been misused even though he has borrowed the amount from Damodhar and the said amount has been paid in instalment, but without returning the blank cheque, K. Damodhar got filed the complaint through his son-in-law, the respondent herein. Therefore, the Judgment and order of conviction passed by the trial Court, which has been confirmed by the learned Sessions Judge are illegal, perverse and incorrect, which calls for interference. In support of the aforesaid contention, the learned Counsel drawn my attention to reply notice and the deposition of P.W. 1 have carefully gone through the cross-examination made by the revision petitioner-accused. It is clear from the notice issued by the respondent that this petitioner had borrowed Rs. 30,000/- as hand loan from the respondent and in token thereof, he has executed a demand promissory note and issued a post-dated cheque for Rs. 30,000/-. When it was presented for encashment, the said cheque came to be bounced. In such type of case, when an accused has taken a specific contention that he has not borrowed any amount and a Blank cheque was issued in favour of K. Damodar Naidu, who is none other than the father-in-law of the respondent. But the revision petitioner failed to examine K. Damodar Naidu. When once the party admits regarding the

issuance of a cheque and also admits the signature in it then burden of proof shifts on him. To rebut the evidence of the respondent-complainant, the revision petitioner-accused did not chosen stepped into the witness box to prove the defence taken by him in his reply notice dated 16-10-1995. Therefore, I do not find any reasons to interfere with the order of conviction and sentence passed by the trial Court and so also the order passed by the learned Sessions Judge in Criminal Appeal No.16/1999 and in Crl. Rev. Petition No. 52/1999. Therefore, the contention taken by the learned counsel for the revision petitioner does not hold water and the same cannot be accepted. On the contrary, the Counsel for the respondent submitted that when once the accused admits about the issuance of the post dated cheque, then burden lien on him to prove his defence or contentions. Since the Revision petitioner accused utterly failed to discharge his burden, therefore the findings recorded by the learned Sessions Judge and the trial Court are to be confirmed does not call for any interference. In support of the aforesaid contentions the counsel for the respondent-complainant relied on the following decisions:

(i) In case of H. Maregowda v. Thippamma reported in : AIR2000 Kant169 has been held as follows (paras 14 to 16) :

'A reading to Section 20 of the Negotiable Instruments Act reveals that the words used are either wholly blank or having written thereon an incomplete negotiable instrument'. This, even if a blank promissory note is given, it cannot be taken as a defence to avoid a decree based on such instrument, once it is found that the document produced before the Court satisfies the requirements of a promissory note within the meaning of the Negotiable Instruments Act. The instrument may be wholly blank or incomplete in particular in either case, the holder has the authority to make or complete the instrument as a negotiable one. The authority implied by a signature to a blank instrument is so wide that the party so signing is bound to be a holder in due course. Even though the holder was authorised to fill a certain amount and he in fact inserts a greater amount, it is necessary that the sum ought not to exceed the amount covered by the same. Promissory notes are often executed in the name of the payer and left unfilled to be afterwards filed by the actual holder, the object being to enable the owner to pass it off to another with

incurring the responsibility as an endorsor. Thus, it is seen that the person in possession of an instrument incomplete in material particulars, has the authority prima facie to fill it up and thus, the executant becomes liable to pay the amount due. Moreover, when there is a clear finding of fact rendered by the trial Court, that a blank signature on stamp paper was given and the document produced before the Court satisfied the conditions of a promissory note, there could be no impediment to grant a decree.'(ii) They also relied on another decision in a case of K.N. Beena v. Muniyappan, reported in : 2001 CriLJ4745 has held as follows (para 7) :

The High Court appears to have proceeded on the basis that the denials/averments in respondent's reply to the legal notice were sufficient to shift the burden of proof on the appellant-complainant to prove that the cheque was issued for a debt or liability. This is an entirely erroneous approach. The accused had to prove in the trial, by leading cogent evidence, that there was no debt or liability. The respondent-accused not having discharged the burden of proving that the cheque was issued for debt or liability, the conviction as awarded by the Magistrate was correct. The High Court erroneously set aside that conviction.' (iii) He also relied on another decision in case of Shri Ishar Alloys Steels Ltd. v. Jayaswals NECO Ltd., reported in 2001 Cri LJ 1250 ; (AIR 2001 SC 1161).

4. I have carefully gone through the decisions referred to by the learned counsel for the respondent. In all these three cases, it is held that Sections 118 and 139 of the Negotiable Instruments Act, the Court has to presume that the cheque has been issued for discharging the debt or liability. Whereas in the instant case, the revision-petitioner admits about the issuance of the cheque. But, he has taken a contention that the cheque was issued in favour of one K. Damodar Naidu. The said Damodhar fails to return the cheque even though the entire amount had been paid. When such being the case, the burden heavily lies on the revision-petitioner-accused by examining himself and also examining other witness like Damodhara Naidu. Mere admissions made by the respondent that the cheque has been issued in December, 1993 does not ipso facto support the contention of the revision-petitioner-accused. Therefore, the trial Court and the learned Sessions Judge have rightly believed the oral testimony of P.W. 1 i.e., the respondent herein and

came to a right conclusion by holding that the petitioner has committed an offence under Section 138 of the Negotiable Instruments Act. In fact, the learned Sessions Judge dealt on each and every point raised by the revision-petitioner-accused. Viewed from any angle, I do not find any good reasons to interfere with the impugned orders passed by the trial Court and learned Sessions Judge. Therefore, the revision-petition is liable to be dismissed as devoid of merits, Accordingly, it is dismissed.