Nagaraja Upadhya Vs. M. Sanjeevan

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SooperKanoon Citation : sooperkanoon.com/388312

Court : Karnataka

Decided On : Jun-06-2007

Reported in : I(2008)BC229; 2007CriLJ3800; ILR2007KAR3368; 2007(5)KarLJ288

Judge : V.G. Sabhahit, J.

Acts : Negotiable Instruments Act, 1881 - Sections 138; Code of Criminal Procedure (CrPC) - Sections 200

Appeal No. : Criminal Appeal No. 1283/2001

Appellant : Nagaraja Upadhya

Respondent : M. Sanjeevan

Advocate for Def. : Rajeevi Shyam, Adv.

Advocate for Pet/Ap. : Vyasa Rao K.S., Adv.

Disposition : Appeal dismissed

Judgement :

V.G. Sabhahit, J.

1. This appeal by the complainant is directed against the judgment of acquittal passed by the Court of the Addl. Civil Judge (Jr. Dn.,) Udupi, in Criminal Case No.

3325/1997 dated 10-7-2001, wherein the respondent has been acquitted for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'Act').

The essential facts of the case leading up to this appeal with reference to the rank of the parties before the Trial Court are as follows:

2. The appellant herein filed a private complaint under Section 200 Cr.P.C, against the accused alleging that the accused had borrowed a sum of Rs. 25,000/- from the complainant in January 1996 on the pretext that he needed the money urgently for the medical treatment of his close relative. The complainant lent the money in cash, on sympathetic grounds since he knew the accused for several years. The accused promised to repay the amount within two months and there was no agreement to pay any interest. However, the accused did not bother to repay the amount within two months and after persistent reminders, he issued a Cheque dated 03-06-1997 bearing No. 0076049 of Syndicate Bank Catholic Centre Branch, Udupi, for Rs. 19,750/- and when the said Cheque was presented for payment, the same was returned with the endorsement 'account closed'. Lawyer's notice was issued on 16-6-1997 and the said notice was served upon the accused and the accused has given an untenable reply instead of complying with the demand and wherefore, the complaint that the respondent has committed the offence punishable under Section 138 of the Act. The Trial Court recorded the statement of the complainant and issued summons to the accused and the accused appeared and pleaded not guilty and claimed to be tried. On behalf of the complainant, the complainant was examined as PW1 and he also examined PW2 to prove the endorsement, Ex.P2 and got marked the documents, Exs.P1 to P5. On behalf of the accused, the accused was examined as DW3 and he also examined DWs. 1 and 2 and got marked the documents, EXs.D1 to D13. The Trial Court after considering the contentions of the Learned Counsel appearing for the complainant-appellant and the accused and appreciating the oral and documentary evidence on record adduced by the parties, held that the complainant has foiled to prove that the respondent-accused has committed the offence punishable under Section 138 of the Act and accordingly, acquitted the respondent-accused of the said offence by the judgment dated 10-7-2001. Being

aggrieved by the said judgment of acquittal, the complainant has preferred this appeal.

3. I have heard the Learned Counsel appearing for the appellant. Having regard to the contentions urged, the point that arises for determination in this appeal is:

Whether the judgment of acquittal passed by the Trial Court calls for interference in this appeal?

I answer the above point for determination in the negative for the following:

REASONS

4. Learned Counsel for the appellant has taken me through the evidence of PWs.1 and 2 and DWs.1 to 3 and the contents of the documents got marked by the complainant and the accused. Learned Counsel for the appellant submitted that the Trial Court was not justified in acquitting the respondent and material on record shows that the accused has committed the offence punishable under Section 138 of the Act.

5. PW1 -Complainant has reiterated the averments made in the complainant and has produced Exs.P 1 to P5. It is elicited in the cross-examination of PW1 that apart from the transaction in question, he had no other transaction with the accused and the accused has filed a criminal case against him stating that he has committed theft of the cheque and the said case is pending in O.S. No. 558/1997 in Kannanooru Court and he has engaged an Advocate in the said case. It is further elicited in the cross-examination of PW1 that he does not know the relationship of the accused with one T.C. Jayananda and he has maintained the documents regarding the amounts lent by him and the accused had taken loan saying that the amount was required for treatment of this family member and he did not feel like taking any document from the accused while lending the amount and he does not know as to whether the accused and T.C. Jayananda were partners of Vasantha Bakery. It is further elicited in the cross-examination of PW1 that the contents of the cheque have been written in his office and the same is in the handwriting of Nalini, who was an employee in his office and he does not know

as to how the accused puts his signature and all the contents of the cheque were filled up by Nalini and he does not know as to whether the accused had given any intimation to stop payment of the said cheque and it is not true to suggest that a false complaint has been foisted against the accused. PW2-Manger, Syndicate Bank, has stated in his evidence that the memo, Ex.P2,' was issued stating that the account was closed and the cheque could not be honoured and it is elicited in his cross-examination that Ex.P2 is not in his handwriting and he does not know as to who had presented the cheque for payment. D W1, who was working as Senior Manager, Syndicate Bank, Udupi, has stated in his evidence that the accused had current account in Catholic branch of Syndicate Bank between 17-9-1985 to 25-6-1996 and he had not received any intimation from the accused and as per the rules of the Bank, the account had been closed by him and he had not issued any notice to the account holder and the account of the accused was closed on 25-6-1996 and Ex.P31 (a) is the acknowledgment which bears the signature of the accused. DW1 has further deposed that he does not know as to whether complaint has been received from the accused stating that one cheque belonging to him had been forged and he does not know as to whether the complainant is having any account in their Bank. It is elicited in the cross-exanimation of DW1 that Ex.P1, cheque is issued in respect of the account of the accused. DW2 is the Advocate who was appearing for the accused in O.S. No. 338/1994 and he has produced Ex.D3, letter written by the accused to him. DW3 is the accused and he has stated in his evidence that Ex.P1 -Cheque does not bear his signature and he had not taken any loan from the complainant nor issued any cheque and his signature has been forged and he has filed a complaint against the complainant. It is clear on re-appreciation of the above said evidence adduced by the parties and the material on record that the account of the accused was closed on 25-6-1996 and the account was not closed on the intimation given by the accused, but, the account was closed as per the rules of the Bank, as spoken to by DW1, which fact has not been controverted in the cross-examination and wherefore, on the date of issue of cheque, Ex.P 1, i.e., 03-06-1997, the accused did not have any account in the Bank in respect of which cheque issued as per Ex.P 1. Further, it is clear from the facts elicited in the cross-examination of PW1 that he has maintained the account regarding lending amount, however, he did not feel like taking any document in respect of the amount lent to the accused and that all the contents of the cheque were written in his office by his employee-Nalini. Therefore, it is clear that the contents of the cheque has been filled up by the employee of the complainant and not by the accused and though the signature of the accused on the cheque is disputed, no steps have been taken to prove that the said signature is that of the accused. In any view of the matter, in view of the fact that on the date of issuance of the cheque, Ex.P1, i.e., 03-06-1997, even according to the complainant, the account of the accused in the Bank had been closed and the account of the accused was closed on 25-06-1996 at the instance of the Bank and not at the instance of the accused, provision of Section 138 of the Negotiable Instruments Act is not attracted in this case. However, this will not preclude the complainant to work out his remedy in accordance with law and on re-appreciation of the evidence on record, I find that the Trial Court has rightly appreciated the above said material on record and has come to the conclusion that the complainant has failed to prove that the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act and the said judgment of acquittal does not suffer from any error or illegality as to call for interference in this appeal and accordingly, 1 answer the point for determination in the negative and pass the following Order:

The Appeal is dismissed. The judgment of acquittal passed by the Addl. Civil Judge (Jr.Dn.,) and JMFC, Udupi, in Criminal Case No. 3325/1997 dated 10-07-2001 is confirmed.