

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 31ST DAY OF JULY, 2012

B E F O R E

THE HON'BLE MR. JUSTICE A.N. VENUGOPALA GOWDA

CRIMINAL REVISION PETITION NO.299/2010

BETWEEN:

A.V. A. Padmanabha,
Aged about 52 years,
S/o. Venkatesh,
No.87/3, 12th 'B' Main,
2nd Block, Jayanagar,
Bangalore – 560 011.

... PETITIONER

(By Sri Makam Nagaraja Gupta, Adv.)

AND:

Prasad Reddy,
Aged about 41 years,
S/o. late Muddappa Reddy,
Chokkanahalli Village,
Yelahanka Hobli,
Bangalore North Taluk.

... RESPONDENT

(Respondent served but unrepresented)

This Crl.R.P. is filed under Section 397 r/w 401 Cr.P.C. praying to set aside the judgment and sentence dated 11.08.2009 passed by the XII Addl. CMM., Bangalore in C.C.No.7527/2008 and consequently to set aside the judgment dated 19.12.2009 in Crl.A.No.721/2009 passed by the P.O., FTC-13, Bangalore and acquit the petitioner of the offences charged with.

This Crl.R.P. coming on for hearing this day, the Court made the following:

O R D E R

Respondent filed a complaint against the petitioner in the Court of XII Addl. CMM, Bangalore City, for an offence punishable under S.138 of the Negotiable Instruments Act, 1881 (for short, 'the Act'). It was stated therein that, the petitioner herein borrowed hand-loan of ₹5,00,000/-, promising to repay the amount within six months with interest and issued cheque No.179730 dated 26.12.2007 for ₹5,00,000/-, drawn on ABN Amro Bank, Residency Road, Bangalore and when the said cheque was presented for encashment, bounced and an endorsement dated 01.01.2008, as 'funds insufficient' was issued, whereafter, a demand notice dated 09.01.2008 was sent through RPAD and also certificate of posting and despite service, the cheque amount was not paid.

2. Learned Magistrate, after taking cognizance of the offence, in view of the accused pleading not guilty,

after recording the evidence of complainant / PW-1, who marked Exs.P1 to P7, examined the accused under S.313 of Cr.P.C. Petitioner – accused deposed as DW-1. After noticing the evidence, learned Magistrate found the accused guilty of the offence punishable under S.138 of the Act. Acting under S.255 (2) of Cr.P.C., he convicted the accused for offence under S.138 of the Act and imposed sentence, fine of ₹5,000/-, in default, to undergo S.I. for 6 months. Acting under S.357 Cr.P.C., accused was directed to pay compensation amount of ₹5,00,000/- to the complainant, in default, to undergo S.I. for 6 months.

3. Feeling aggrieved, accused filed Crl.A.No.721/2009 in the Sessions Court, Bangalore City. Learned Appellate Judge, having considered the matter, finding the appeal to be devoid of merit, passed Judgment of dismissal on 19.12.2009. Feeling aggrieved, accused has filed this Criminal Revision Petition.

4. Sri Makam Nagaraja Gupta, learned advocate appearing for the petitioner contended that the findings recorded by the Courts below in the impugned Judgments are perverse. He submitted that the defence put forth being probable, has not been considered and as a result, there is miscarriage of justice. He submitted that, there being no proof of legally enforceable debt placed on record by the complainant, the petitioner ought to have been acquitted of the offence, since all the ingredients necessary for holding a person guilty and passing a Judgment of conviction under S.138 read with S.142 of the Act has not been established.

5. Respondent is served and has remained unrepresented.

6. Perused the record. Point for consideration is, *whether the Courts below are justified in holding the petitioner guilty of the offence punishable under S.138 read with S.142 of the N.I. Act?*

7. Complainant has deposed as PW-1. Ex.P1 is the cheque issued by the accused – petitioner. Signature of the petitioner on Ex.P1 has been marked as Ex.P1(a). Said cheque was returned by the bank as per Exs.P2 and P3. Demand notice was issued by the complainant vide Ex.P4. Petitioner does not dispute the fact, that Ex.P1 belongs to him and that it contains his signature. According to him, the cheque Ex.P1 was delivered by him to one Kumaraswamy, to remit telephone bill/s. Petitioner alleges that, on account of the collusion between Kumaraswamy and the complainant, the cheque having been misused, the complaint in question has been filed.

8. Since signature on Ex.P1 is not disputed by the petitioner, the complainant has discharged the initial burden. Hence, the presumption under S.139 of the Act can be extended to the complainant. The burden of proof having been shifted to the petitioner, the petitioner though deposed as DW-1 has failed to place probable defence.

9. According to the petitioner, Ex.P1 was delivered by him to Kumaraswamy, for payment of telephone bill/s. Petitioner is an engineer. He has not examined Kumaraswamy. He has also not produced the telephone bill/s, showing arrears, if any, in respect of which Ex.P1 was issued and delivered. In fact, learned advocate appearing for the petitioner was heard in part on 27.07.2012 and the matter was adjourned to enable the petitioner to produce the telephone bill/s, if any, for payment of which, the cheque was issued. Sri M.N. Gupta submitted that the petitioner does not have the telephone bill/s. Thus, the case of the petitioner that Ex.P1 was delivered by him to Kumaraswamy for payment of telephone bill/s has not been established.

10. Under S.139 of the Act, Court has to presume that, unless contrary was proved, the holder of the cheque received the cheque for discharge, in whole or in part, of a debt or liability. Thus, in a complaint filed for the offence under S.138 of the Act, Court has to presume that the

cheque had been issued for the discharge of a debt or liability. This presumption is rebuttable and the burden of proving that the cheque had not been issued towards discharge of a debt or liability is on the accused.

11. The evidence of the petitioner / DW-1 has been appreciated by both the Courts below and the same being only formal in nature, has rightly been not accepted. In the contextual facts of the matter, it was for the petitioner to have led cogent evidence showing that there was no debt or liability towards the complainant. The petitioner has not discharged the burden, by proving that the cheque in question was not issued by him for a debt or liability but was delivered to Kumaraswamy to pay telephone bill. Consequently, the conviction as ordered by the learned Magistrate is correct. The Appellate Court, on re-appreciation of the evidence has rightly confirmed the conviction.

In the result, the petition being devoid of merit is dismissed. The conviction and sentence awarded by the

learned Magistrate and confirmed by the learned Sessions Judge are maintained. However, the petitioner is granted time up to 30.11.2012 to pay the fine amount and the compensation amount ordered. In default, petitioner shall undergo S.I. for 6 months.

The bail bond and the surety bond will be in force upto 30.11.2012 only.

Sd/-
JUDGE

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