
(2022) 03 KAR CK 0064

Karnataka High Court At Bengaluru

Case No: Criminal Revision Petition No. 1257 Of 2021

V. Jayalakshmi

APPELLANT

Vs

Dhanashekar K

RESPONDENT

Date of Decision: March 28, 2022

Acts Referred:

- National Investigation Agency Act, 2008 - Section 138

Hon'ble Judges: H.P. Sandesh, J

Bench: Single Bench

Advocate: Sudharshan L, G.K. Sree Vidya, T.N. Vishwanath

Final Decision: Dismissed

Judgement

H.P. Sandesh, J

1. This matter is listed for admission. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. The factual matrix of the case of the respondent/complainant before the Trial Court is that the petitioner/accused had approached the respondent in

the second week of March 2015 and sought for financial help of Rs.5,00,000/- for a period of 20 months. The petitioner also assured him that she

would repay the said amount to him with interest at the rate of 1.5% per annum. Believing the words, the complainant paid an amount of Rs.5,00,000/-

and the accused had issued the post dated cheque as security for the amount borrowed, but she did not repay the amount with interest. When the

cheque was presented, it was returned with an endorsement "funds insufficient". The legal notice was issued and the same was served and

despite the service of notice, the accused neither replied nor complied with the demand. Hence, complaint was filed. The Trial Court took the cognizance and the complainant examined himself as P.W.1 and got marked the documents at Exs.P.1 to 8. The learned counsel for the petitioner cross-examined P.W.1, but not led any defence evidence. The Trial Court after considering both oral and documentary evidence placed on record, convicted the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act (â€~NI Actâ€™ for short) and sentenced to pay fine of Rs.5,25,000/-. In default of payment of fine to undergo simple imprisonment for a period of one year. Being aggrieved by the judgment of conviction, an appeal is filed in Crl.A.No.850/2019 and the Appellate Court on re-consideration of both oral and documentary evidence placed on record, dismissed the appeal. Hence, the present revision petition is filed before this Court.

3. The learned counsel for the petitioner would vehemently contend that it is elicited that the handwriting and the signature in the cheque are in different handwriting and apart from that, specific defence was taken before the Trial Court that the complainant was not having the capacity to lend an amount of Rs.5,00,000/-. The learned counsel submits that cheque was issued in respect of the chit transaction and the documents which have been relied upon by the complainant for having withdrawn the amount is only to the tune of Rs.1 lakh and odd and not Rs.5,00,000/-, which was allegedly lent in favour of the petitioner. This aspect has not been considered by the Trial Court and hence it requires interference of this Court and the matter has to be admitted.

4. Per contra, the learned counsel for the respondent would submit that the signature on the cheque is not disputed. The only dispute before the Trial Court is that while cross-examining P.W.1, it is stated that the cheque was given in connection with the chit transaction and in order to prove the said fact, not led any rebuttal evidence. The same has been considered by the Trial Court as well as the Appellate Court. The learned counsel brought to the notice of this Court the findings of the Trial Court in paragraph Nos.21 to 27 wherein it is discussed with regard to the issuance of the cheque and

no defence evidence has been led. The learned counsel brought to the notice of this Court the re-appreciation made by the Appellate Court with regard to the evidence available on record, particularly in paragraph No.4 considering the grounds urged in the appeal memo and also the reasoning given in paragraph Nos.9 to 16 and so also paragraph No.18 with regard to purport and object of NI Act and dismissed the appeal. Hence, the learned counsel would contend that there is no merit to admit the revision petition.

5. Having heard the respective learned counsel and looking into the material available on record, the complainant in order to substantiate the claim, examined himself as P.W.1 and got marked the documents at Exs.P.1 to 8. Admittedly, legal notice was served on the petitioner in terms of Ex.C.6 postal acknowledgment and no reply was given. The defence which was taken before the Trial Court is with regard to the cheque was issued in connection with chit transaction and in order to substantiate the same, in cross-examination nothing is elicited that the transaction is chit transaction and the petitioner has not led any rebuttal evidence before the Trial Court. Hence, it is clear that afterthought the defence was taken even though no reply was given. If really the cheque was given in connection with chit transaction, the petitioner would have given the reply immediately after service of notice and the same is not done.

6. The other contention of the learned counsel for the petitioner is that though the cheque contains the signature, handwritings are in different handwriting and once the cheque is admitted and given the authority in favour of the holder of the cheque to fill up the same, the same cannot be a ground as held by the Apex Court in the case of BIR SINGH V. MUKESH KUMAR reported in (2019) 4 SCC 197, wherein it is held that presumption that cheque, duly signed and voluntarily made over to payee, was in discharge of debt or liability, arises irrespective of whether the cheque was post-dated or blank cheque for filling by payer or any other person, in the absence of evidence of undue influence or coercion.

7. The other contention of the petitioner is that the respondent was not having capacity to lend the money. The learned counsel would contend that the statement was produced and the same discloses drawing of amount of Rs.1,00,000/- and odd and the same cannot be a ground and the complainant

had produced the document of sale deed of the year 28.12.2010 for having sold the property and out of the sale consideration, loan amount was advanced. When the documents of Exs.P.7 and 8 statement of account and certified copy of the sale deed is produced, the very contention of the petitioner cannot be accepted.

8. Having perused the findings of the Trial Court and the Appellate Court, the Trial Court in paragraph Nos.31 to 33 discussed with regard to the defence taken by the petitioner and so also in paragraph No.35 with regard to the documents which have been relied upon by the complainant and also drawn the presumption in favour of the complainant. The Appellate Court also on re-appreciation of the material available on record, discussed in paragraph Nos.15 and 16 regarding Trial Court has relied upon the documents, particularly bank statement and also sale deed and apart from that, the case was filed in the year 2017 itself and no reply was given inspite of service of notice and given the reasoning that the Trial Court has applied its mind and relied upon both oral and documentary evidence placed on record. Having considered the findings of the Trial Court and the Appellate Court and also taking note of the material available on record, it is not a fit case to admit the appeal and I do not find any error committed by the Trial Court and the Appellate Court in appreciating both oral and documentary evidence placed on record and while exercising the revisional jurisdiction, there must be perversity in the finding and such finding is not found.

Hence, no merit to admit the revision petition.

9. In view of the discussions made above, I pass the following:

ORDER

The petition is dismissed.