

Siddaiah Gowda Vs Ravi Kumari

Court: Karnataka High Court At Bengaluru

Date of Decision: Feb. 4, 2025

Acts Referred: Negotiable Instruments Act, 1881 " Section 138, 139
Code Of Criminal Procedure, 1973 " Section 313

Hon'ble Judges: Shivashankar Amarannavar, J

Bench: Single Bench

Advocate: Dharmapal, V Nagareddy

Final Decision: Allowed

Judgement

Shivashankar Amarannavar, J

1. This appeal is filed by the complainant challenging the judgment of acquittal dated 05.02.2013 passed in C.C.No.23670/2008 by the XIII A.C.M.M.,

Bengaluru, whereunder the respondent -accused has been acquitted for the offence punishable under Section 138 of Negotiable Instruments Act, 1881

(hereinafter referred to as "N.I. Act" for brevity).

2. The brief facts of the appellant -complainant's case is that

The complainant and accused are residing in the same locality and they are family friends. Both used to help each other in the family affairs. During

the month of December -2007, the accused along with her sister Pushpa had came to the house of the complainant to arrange loan of Rs.4,00,000/- to

repair their lorries and to repair her house. The complainant lent a sum of Rs.1,00,000/- each vide four cheques dated 31.12.2007, 07.01.2008,

14.01.2008 and 21.01.2008. The respondent -accused promised to repay the said amount within 06 months. Towards the repayment of the said

amount, the respondent -accused has issued cheque bearing No.871587 dated 10.07.2008 for Rs.4,00,000/- drawn in Syndicate Bank, Puttanachetty

Road Brnach, Bengaluru. The appellant -complainant presented the said cheque for encashment and it came to be dishonoured with endorsement as

want of sufficient fund in the account of the respondent -accused. The complainant got issued legal notice to the respondent -accused. Inspite of

service of legal notice the respondent -accused neither replied to the legal notice nor paid the cheque amount. Therefore, the appellant -complainant

has filed private complaint against the respondent Añâ,¬"accused for offence punishable under Section 138 of Negotiable Instruments Act, 1881.

3. Learned Magistrate took cognizance and registered case against the respondent Añâ,¬"accused for offence punishable under Section 138 of N.I. Act

in C.C.No.23670/2008. The plea of the respondent Añâ,¬"accused has been recorded. The complainant in order to prove his case has examined himself

as P.W.1, got examined one witness as P.W.2 and got marked documents as Ex.P1 to P11. The statement of respondent -accused came to be

recorded under Section 313 of Cr.P.C. The respondent Añâ,¬" accused has been examined himself as D.W.1 and no documents are produced on behalf

of the respondent Añâ,¬" accused. Learned Magistrate after hearing arguments on both sides has formulated points for consideration and passed

impugned judgment of acquittal. The said judgment of acquittal has been challenged by the complainant in this appeal.

4. Heard learned counsel for the appellant and learned counsel for the respondent.

5. Learned counsel for the appellant would contend that the respondent Añâ,¬"accused has not disputed her signature on cheque Añâ,¬"Ex.P1. As the

respondent Añâ,¬" accused has not been disputed signature on Ex.P1 Añâ,¬" cheque, the presumption has to be drawn under Section 139 of N.I Act that

cheque has been issued for making payment of legally enforceable debt. The said presumption has not been rebutted by the respondent Añâ,¬"accused.

He further submits that amount has been lent through four cheques on different dates and they have been en-cashed and there are entries in that

regard in the passbook of the bank account of the complaint which is at EX.P6. The respondent Añâ,¬"accused has not put forth his defence at initial

stage by sending reply to the legal notice. The complainant has credited sufficient balance in order see that cheques issued to respondent -accused are

honoured prior to their dates. The said aspect has been misunderstood by the learned Magistrate by starting that cheques have been en-cashed by the

complainant and amount is re-deposited to the bank account of the complainant. The appellant has examined his wife Añâ,¬" Sumitra who is signatory to

Ex.P4 and P5. The contention of the respondent Añâ,¬"accused is that P.W.2 Añâ,¬"wife of the complainant was running chit transaction has been denied

by P.W.2. The respondent Añâ,¬"accused in order to establish that P.W.2 Añâ,¬"Sumitra was running chit transaction has not placed any materials on

record. The respondent Añâ,¬"accused has not established that Ex.P1 Añâ,¬"Cheque has been issued to P.W.2 as security to chit transaction. Without

considering all these aspects, learned Magistrate has erred in passing judgment of acquittal. With these, he prays to allow the appeal and convict the

respondent Añâ,¬" accused for offence punishable under Section 138 of the N.I Act.

6. Learned counsel for the respondent Ã¢â¬accused would contend that the respondent Ã¢â¬accused has taken up the defence that the Ex.P1 Ã¢â¬cheque

has been issued as security to the chit transaction run by wife of the complainant Ã¢â¬P.W.2 -Sumitra. The respondent Ã¢â¬accused has also denied the

capacity of the complainant to lend huge amount of Rs.4,00,000/-. The respondent Ã¢â¬accused has denied execution of Ex.P4 Ã¢â¬on demand

promissory note and Ex.P5 Ã¢â¬consideration receipt. He submits that Ex.P6 Ã¢â¬Bank pass book itself indicate that on the same day the amount of the

three cheques have been re-credited to the account of the complainant that itself indicate that cheques have not been en-cashed by the accused.

P.W.1 has stated that he has availed loan and gave to the accused and no materials have placed in that regard. D.W.1 -accused has stated his

defence in his evidence. Considering all these aspects, learned Magistrate has rightly passed judgment of acquittal of the respondent Ã¢â¬accused for

offence punishable under Section 138 of the N.I Act. With these, he prays for dismissal of the appeal.

7. Having heard learned counsels, the Court has perused the impugned judgment and trial Court records. Considering the grounds urged, the point

arises for my consideration is

Ã¢â¬Whether learned Magistrate has erred in passing the judgment of acquittal of respondent Ã¢â¬accused for offence punishable under

Section 138 of N.I. Act.Ã¢â¬?

My answer to the above point is in the affirmative for the following reasons.

It is specific case of the appellant Ã¢â¬complainant that the respondent Ã¢â¬accused borrowed Rs.4,00,000/- and in order to repay the amount borrowed

has issued Ex.P1 Ã¢â¬ cheque for Rs.4,00,000/-. The respondent Ã¢â¬accused has admitted her signature on Ex.P1 Ã¢â¬cheque. As respondent

Ã¢â¬accused has admitted her signature on Ex.P1 -cheque, the presumption has to be drawn under Section 139 of the N.I Act that cheque has been

issued for making payment of debt. The said presumption is rebuttable presumption. The standard of proof for rebutting the said presumption is

preponderance of probability.

8. It is defence of the respondent Ã¢â¬accused that Sumitra Ã¢â¬P.W.2 -wife of the appellant Ã¢â¬complainant was running chit transaction and Ex.P1

cheque has been issued as security to the said chit transaction. P.W.2 Ã¢â¬Sumitra, the wife of the appellant Ã¢â¬complainant has denied the suggestion

that she was running chit transaction and Ex.P1 Ã¢â¬cheque has been issued as security for the said chit transaction. D.W.1 in his cross examination

has admitted that there are other members of the said chit transaction. The respondent Ã¢â¬accused has not chosen to examine any of the members

of the chit transaction to establish his defence that Ex.P1 "cheque has been given as security to the chit transaction run by P.W.2 Sumitra. In

the cross examination of P.W.1 it is suggested by showing four pocket note books stating that contents are in hand writing of his wife. The said

suggestion itself indicates that the respondent "accused is possessing those 04 pocket note books and they are not produced. Even, P.W.2 has

denied the suggestion that three books shown to her contained her hand writing. The said books are not produced even though accused has been

examined as D.W.1.

9. Ex.P6 is bank pass book of the complainant of Syndicate Bank. Entries dated 31.12.2007, 07.01.2008, 14.01.2008 and 21.01.2005 indicate that

cheques issued in the name of Ravi Kumari for Rs.1,00,000/- each have been en-cashed. The said entries indicate that Ravi Kumari who is accused

herein has en-cashed those cheques drawn for Rs.1,00,000/- each. It is contention of the respondent "accused that on the dates of en-cashing the

said cheques, same amount of Rs.1,00,000/- has been deposited in the account of the complainant. On perusal of the said pass book even though there

is deposit of Rs.1,00,000/- it is not by cash it is by clearing SBM cheque. Therefore, the said contention is that the amount has been withdrawn by the

complainant in the name of the respondent "accused and same is deposited in his account. The very said availability of the balance in the bank

account of the complainant indicate that he had capacity to lend the amount. More so the complainant has stated that he borrowed amount from

different persons and made arrangements for payment to the respondent "accused. Considering all these aspects, the respondent "accused has

failed to rebut the presumption drawn under Section 139 of the N.I Act that cheque has been issued for making payment of debt.

10. Ex.P1 "cheque has been dishonoured for want of funds in the account of the respondent "accused. Within statutory period the notice

"Ex.P7 dated 31.07.2008 has been issued to the respondent "accused by RPAD and under certificate of posting. The notice sent to the

respondent "accused by RPAD has been served on her and postal acknowledgment is at Ex.P10. The respondent "accused has not sent any

reply to the legal notice nor paid the cheque amount. The respondent "accused has denied service of said legal notice. Considering the postal

acknowledgement and certificate of posting it is clear that the notice has been served on the respondent "accused. The respondent "accused has

not paid the cheque amount within statutory period and therefore, the complaint has been filed within statutory period from the date of cause of action.

Considering all these aspects, the appellant "complainant has established that the respondent "accused has committed offence punishable under

Section 138 of N.I Act.

11. Without considering all these aspects, learned Magistrate has erred in passing the impugned judgment of acquittal and therefore, impugned

judgment of acquittal requires to be set aside. The respondent "accused requires to be convicted for offence punishable under Section 138 of the

N.I Act.

12. In the result, the following

ORDER

i) The appeal is allowed.

ii) The impugned judgment of acquittal dated 05.02.2013 passed in C.C.No.23670/2008 by XIII A.C.M.M., Bengaluru acquitting the respondent

"accused for offence punishable under Section 138 of the N.I Act is set aside.

iii) The respondent "accused is convicted for offence punishable under Section 138 of the N.I Act and he has been sentenced to pay fine of

Rs.4,10,000/- and in default of payment of said fine amount he shall undergo simple imprisonment for a period of 06 months.

iv) Out of the fine amount Rs.4,00,000/- is ordered to be paid as compensation to the appellant "complainant.

v) The respondent "accused shall deposit the said fine amount within 02 months from this day.