

Bhawani Anand Vs B.J. Vikas Kumar

Court: Karnataka High Court At Bengaluru

Date of Decision: Feb. 12, 2025

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

Hon'ble Judges: Shivashankar Amarannavar, J

Bench: Single Bench

Advocate: Yathish Kumar, Tharanath Shetty

Final Decision: Allowed

Judgement

Shivashankar Amarannavar, J

1. This appeal is filed by the complainant challenging the judgment of acquittal dated 17.12.2012 passed in C.C.No.35724/2010 by the XIV Additional

Chief Metropolitan Magistrate, Bengaluru, whereunder the respondent - accused has been acquitted for offence punishable under Section 138 of the

Negotiable Instruments Act, 1881 (hereinafter referred to as 'N.I. Act' for brevity).

2. The case of the appellant - complainant in brief, is as under:

The respondent "accused has entered into Business investment Agreement dated 23.05.2007 and the appellant "complainant invested

Rs.3,00,000/- paid through cheque to the respondent "accused. The respondent "accuse assured to pay profit of Rs.15,000/- every month for five

months till the date of renewal of the agreement. But the respondent "accused has not paid the profit as agreed by him for more than 28 months and

therefore, the appellant "complainant approached the respondent "accused and the respondent "accused postponed to pay the profit amount.

The appellant "complainant recall the guarantee and presented the cheque issued by the respondent-accused bearing No.929018 dated 12.12.2009

for Rs.3,00,000/- drawn on ICICI Bank, Kammanahalli Branch Bengaluru. The appellant "complainant presented the said cheque for encashment

and the said cheque came to be dishonoured for reason "Account is Dormant". The appellant - complainant got issued legal notice on 16.01.2010.

Inspite of service of notice the respondent "accused did not pay the cheque amount. Therefore, the complainant has filed a private complaint against

the respondent - accused for offence punishable under Section 138 of the NI Act.

3. Learned Magistrate has taken cognizance against the respondent "accused and registered case in C.C.No.35724/2010 for offence punishable

under Section 138 of the N.I Act. The plea of respondent - accused has been recorded. The complainant in order to prove her case has examined

herself as P.W.1 and got marked documents as Ex.P1 to P10. P.W.1 has not tendered herself for cross examination and same was noted in the order

sheet dated 28.08.2012 and the case has been posted for recording of the statement under Section 313 of Cr.P.C. The statement of respondent -

accused came to be recorded under Section 313 of Cr.P.C. 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 after chief examination of P.W.1 which is recorded on 07.06.2012, P.W.1 due to her ill-health

has not attended the Court on subsequent dates of hearing. Therefore, there is reason for the appellant "complainant for absence on the dates on

which case is posted for her cross examination. The appellant "complainant has produced medical certificate along with appeal memo. The

judgment of acquittal is passed only on the ground that P.W.1 has not tendered for cross examination and she has not proved her case. With these, he

prayed to allow the appeal.

6. Learned counsel for the respondent "accused would contend that inspite of granting sufficient time P.W.1 has not tendered herself for cross

examination and considering the same learned Magistrate has recorded the same and proceeded with the matter. The counsel for the complainant was

not diligent in the trial Court and also not diligent before this Court. He ought to have sought for remand of the matter at the time of admission itself.

With this, he prays for dismissal of the appeal.

7. Having heard learned counsel, this Court has perused the impugned judgment and trial Court records.

8. The appellant is complainant and respondent is accused before the trial Court. The complainant in order to prove her case has got examined herself

as P.W.1 and her chief examination has been recorded on 07.06.2012. The case has been posted for cross examination of P.W.1 on 11.07.2012,

07.08.2012 and 28.08.2012. On all those three dates P.W.1 was not kept present for cross examination. Learned Magistrate noting the same has

closed the evidence of P.W.1 stating that she was not tendered for cross examination. Thereafter, recorded the statement of accused under Section

313 of Cr.P.C and proceeded with matter and passed impugned judgment of acquittal on the ground that P.W.1 has not tendered for cross

examination. The judgment of acquittal has not been passed on merits of the case. The appellant "complainant has produced medical certificate

issued by Orthopedic Clinic dated 07.07.2012 which indicate that she was suffering from "Acute Lumbo Sacral Strain with Sciatica". The

appellant "complainant has also produced medical certificates dated 22.09.2012 and 10.10.2012. As the appellant "complainant was suffering the

above noted illness, she was not present for cross examination on 11.07.2012, 07.08.2012, 28.08.2012. The absence of the P.W.1 before the trial

Court is not for malafide reasons but it is for bonafide reasons. As the judgment of acquittal is not passed on the merits of the complainant's

case, the matter requires to be remanded by setting aside the impugned judgment of acquittal.

9. In the result, the following

ORDER

i. The appeal is allowed.

ii. The judgment of acquittal dated 17.12.2012 passed in C.C.No.35724/2010 by the XIV Additional Chief Metropolitan Magistrate, Bengaluru is set

aside.

iii. The matter is remanded to the Trial Court for proceeding with the matter from the stage of cross examination of P.W.1.

iv. P.W.1 shall be kept present before the trial Court on 03.03.2025 and learned counsel for the respondent "accused shall cross examine the P.W.1

on that day.

v. Parties are directed to appear before the trial Court on 03.03.2025 without awaiting the Court notice.

vi. Registry is directed to send trial Court records along with copy of this order to the concerned trial Court forthwith.