
N. Manjegowda s/o Nanjappa Vs N.V. Prakash

Criminal Revision Petition No. 667 of 2014

Court: KARNATAKA HIGH COURT

Date of Decision: March 3, 2017

Acts Referred:

Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2017) 2 AirKarR 465

Hon'ble Judges: Budihal R.B., J.

Bench: Single Bench

Advocate: Sri. Chandrashekara K.A., HCGP, for the Petitioner; Sri. Shankarappa, Advocate (absent), for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Budihal R.B., J.â€”This revision petition is filed by the revision petitioner-accused challenging the legality and correctness of the judgment and

order of conviction dated 19.8.2013 passed by the XVI ACMM, Bengaluru, in C.C. No.11000/2009 and also the judgment and order dated

09.07.2014 passed by the Additional Sessions Judge, FTC-X, Bengaluru in Criminal Appeal No.467/2013.

2. Brief facts of the case of the complainant are that the accused and complainant are well known to each other from considerable time. The

complainant contended that during the month of June, 2008, the accused approached the complainant and requested for the financial assistance to

the tune of Rs.1,00,000/- to meet his domestic problems and other necessities and agreed to pay the same within six months. Believing the words

of the accused, the complainant paid the amount of Rs.1,10,000/-. After the lapse of six months, the complainant approached the accused for

repayment. The accused got issued a cheque bearing No.317302, dated 28.01.2009 for Rs.1,10,000/- drawn on Syndicate Bank, KSRTC

Extension Counter, K.H. Road Branch, Bengaluru, in favour of the complainant. The complainant presented the said cheque for encashment, but,

the same was returned unpaid on 29.01.2009 because of the "stop payment instruction" given by the accused. Thereafter, the complainant got

issued legal notice to the accused through his advocate on 16.02.2009 and the same was duly served on the accused. The accused denied the

payment and issuance of the instrument. Hence, the complainant filed a private complaint before the trial Court.

3. In proof of his case, the complainant got examined himself as P.W.1 and three witnesses were examined as P.Ws.2 to 4 and the documents

Exs.P.1 to P.10 got marked. On the side of the accused, D.W.1 was examined and one document Ex.D.1 got marked. After considering the

materials placed on record, both oral and documentary, ultimately, the trial Court held that the accused has committed an offence punishable under

Section 138 of the Negotiable Instruments Act and sentenced him to pay the fine of Rs.1,15,000/-. Being aggrieved by the same, when the

accused preferred an appeal, the first appellate Court, after considering the materials, dismissed the appeal by confirming the judgment and order

passed by the trial Court.

4. Heard the arguments of the learned Counsel appearing on behalf of the revision petitioner-accused. The learned Counsel made submission that

there was no such transaction of accused borrowing the amount of Rs.1,10,000/- from the complainant. It is also submitted that the accused never

issued the cheque in discharge of any debt in favour of the complainant. It is also his contention that as per the defence of the accused, when he

was travelling in KSRTC bus, he lost two cheque leaves and taking undue advantage of the same, the complainant filed a false case against the

accused. The learned Counsel submitted that even with regard to the financial capacity of the complainant to make payment of Rs.1,10,000/-,

there is no satisfactory and acceptable materials placed by the complainant. All these aspects were not properly considered and appreciated by

both the Courts below. Hence, he submitted that the impugned judgment and orders of the Courts below are illegal and they are liable to be set

aside by allowing the revision petition.

5. The respondent and learned Counsel for the respondent both remained absent. No representation.

6. I have perused the grounds urged in the revision petition, the judgment and order of conviction passed by the trial Court so also the first

appellate Court.

7. Looking to the materials placed on record, the evidence part goes to show that the accused has accepted his signature on the cheques. But it is

his contention, by way of defence, that he has lost two cheque leaves when he was travelling and when he went to the police station to give

complaint, the police asked him to go to the bank and give instruction to stop the passing of the said cheques.

8. Looking to the judgment of the trial Court, the trial Court has referred to the evidence of the witnesses examined so also the documents. The

trial Court has also discussed about the presumption under Sections 118 and 139 of the Negotiable Instruments Act. When the accused has

admitted his signature on the instrument and when it has been produced by the complainant before the Court on the next date, it is the burden on

the part of the accused to explain as to how the instrument came into possession of the complainant.

9. In the oral evidence of D.W.1 (accused), even he has is not sure in which bus and at what time, he lost the two cheque leaves. Admittedly, no

complaint was lodged. So the conduct of the revision petitioner-accused is also material in appreciating his defence. If really, the signed cheques

were lost, then he would have immediately approached the police giving the complaint so also approach the concerned bank. When there is no

acceptable rebuttal evidence on the side of the accused person to show as to how the complainant came into possession of the instrument (cheque

leaves) and when there are concurrent findings of the Courts below referring to the evidence placed on record holding that the complainant has

established his case that the accused has borrowed the amount and in discharge of the same, he issued the cheque, this Court in this revision

petition cannot go into all such factual aspects.

10. Perusing the impugned judgment and orders of the Courts below, they are supported by the sound reasons of the Court below. I do not find

any illegality in the said judgments. There are no justifiable grounds to interfere with the judgment and orders of the Courts below. No merit in this

revision petition.

Accordingly, the revision petition is rejected.

11. At this stage, learned Counsel for the revision petitioner-accused submitted that the revision petitioner-accused has deposited the amount of

Rs.34,000/- before the trial Court and for the payment of remaining amount, he submitted that three months time be granted. In view of the said

submission of the learned Counsel and looking to the facts and circumstances of the case, three months time is granted to the revision petitioner to

make payment of the remaining amount before the trial Court.