
L. Raju Vs Gurappa Reddy

Criminal Appeal No. 13 of 2010

Court: Karnataka High Court

Date of Decision: July 9, 2015

Acts Referred:

Negotiable Instruments Act, 1881 (NI) - Section 138, 139

Citation: (2015) 5 KarLJ 457

Hon'ble Judges: P.D. Waingankar, J

Bench: Single Bench

Advocate: S. Girish, for the Appellant

Final Decision: Dismissed

Judgement

P.D. Waingankar, J

The appellant was the complainant before XVI ACMM, Bangalore in C.C. No. 9769 of 2008. By judgment dated

23-5-2009, respondent-accused has been acquitted of the charge under Section 138 of the Negotiable Instruments Act, 1881. Hence, this appeal

by the complainant. The brief facts of the case of the complainant are as under:

The respondent (hereinafter be called as "accused") borrowed a sum of Rs. 6.00 lakhs as hand loan from the appellant (hereinafter called as

"complainant") to meet his family financial necessities during the month of January 2006. The accused repaid an amount of Rs. 88,000/- out of the

loan amount of Rs. 6,00,000/-. For the balance amount of Rs. 5,12,000/-, the accused issued a cheque for Rs. 2,62,000/- and another cheque for

Rs. 2,50,000/- dated 13-3-2008. On presentation of both the cheques by the complainant through his banker for encashment, both the cheques

were dishonoured for the reason "funds insufficient". The complainant got issued a demand notice dated 20-2-2008 to the accused both by RPAD

and under certificate of posting demanding the payment of the amount under both the cheques within 15 days from the date of receipt of notice.

The notice sent to the accused by RPAD and UCP was duly served upon the accused. The accused gave untenable reply, which made the

complainant to file a complaint against the accused for the offence punishable under Section 138 of the N.I. Act.

2. The accused appeared and denied the accusation. The complainant in order to prove his case, led his evidence as P.W. 1 and marked Exs. P. 1

to P. 11. The accused on the other hand in support of his defence led his evidence as D.W. 1 and marked Exs. D. 1 to D. 5. The learned

Magistrate upon hearing the arguments and upon consideration of the entire material placed on record by the impugned judgment acquitted the

accused holding that the complainant failed to prove his case.

I have heard the submission made by the learned Counsel. Perused the records and the judgment passed by the Court below.

3. At the outset, it has to be stated that all the necessary conditions to file a complaint for the offence punishable under Section 138 of N.I. Act

have been duly complied with. There is no dispute between the parties in that regard. What has been disputed by the accused is that the cheques in

question were not issued by the accused to the complainant towards the discharge of legally recoverable debt. It is the case of the accused that he

had never taken hand loan of Rs. 6.00 lakhs from the complainant nor he issued the two cheques referred to by the complainant in favour of the

complainant. Since the accused has admitted his signatures on both the cheques, at the most, presumption can be drawn under Section 139 of the

N.I. Act that the cheques were issued towards the discharge of legal liability. But the presumption under Section 139 of the N.I. Act is a rebuttable

presumption. Accused can rebut the presumption by leading evidence or from the evidence placed on record by the complainant. The accused

need not prove his case beyond reasonable doubt. The burden to be discharged by an accused is that of a plaintiff or defendant in a civil suit i.e.

preponderance of probability. Further it has to be stated that the presumption under Section 139 of the N.I. Act is presumption as to legally

recoverable debt. But there is no presumption as to the existence of debt or liability. Therefore, the existence of debt and liability of the accused

towards the complainant is to be established by the complainant by cogent and convincing evidence. It is in this background, the evidence placed

on record by the parties will have to be appreciated.

4. The case of the complainant that he advanced a hand loan of Rs. 6.00 lakhs to the accused in the month of January 2006. Admittedly, there is

no documentary evidence for having advanced such a huge amount as hand loan to the accused. No specific date on which the amount was

advanced as hand loan is not forthcoming in the complaint. There is no evidence to show that the complainant having withdrawn an amount of Rs.

6,00,000/- from his bank account in Janata Seva Co-operative Bank Limited so as to advance the same to accused as could be seen from Ex. P.

11 his account extract. Before the presentation of the cheques for encashment, a notice was issued by the accused on 16-1-2008 to M/s.

Syndicate Finance Corporation represented by its partners Sri L. Raju and Sri C. Basavaraju as per Ex. D. 1. L. Raju is none other than the

complainant. In the said notice, the accused has stated that he had approached the firm M/s. Syndicate Finance Corporation for hand loan when

he was in need of it and at that time before disbursement of hand loan, both the partners demanded four signed blank cheques from the accused

and a signed blank stamp paper of Rs. 100/- as security documents. Accordingly the accused gave four signed blank cheques bearing Nos.

198394, 198395, 198398, 198399 drawn on Bank of Baroda, J.P. Nagar, Bangalore. Ex. P. 1 bears Cheque No. 198398 and Ex. P. 2-

198399. It is further stated in Ex. D. 1 notice that after taking loan in the year 2003, he repaid the entire loan amount with interest. At that time

also, the aforesaid cheques were retained as security document as before. Even second time also, he repaid the loan by way of cash earlier and

later on by cheques and cleared it by the end of August 2007. In para 4 of Ex. D. 1 he has given in detail the amount paid by him on different dates

by issuance of 16 cheques in the name of partners of the firm. Further it is stated in Ex. D. 1 that after clearing the entire loan, the accused

demanding back his documents submitted to the Syndicate Finance Corporation of the complainant and one Basavaraj. He was made to come to

the office for good number of times and was told ultimately that those documents are with other partners and later on he was told that they are

misplaced somewhere. Thus from Ex. D. 1, one thing is evident that at an undisputed period of time, the accused did give four signed blank

cheques to the Syndicate Finance Corporation as security while obtaining the loan as desired by both the partners. It is not as if the accused has

taken his defence only when the cheques were presented for encashment or for that matter in reply to a demand notice by the complainant. If we

go through the contents of Ex. D. 3, notice dated 6-6-2008 issued by the complainant to the accused, it is stated in para 3 that the accused

approached and borrowed a hand loan of Rs. 6.00 lakhs during March 2006 to meet family necessities. Therefore the complainant is not clear

when exactly he alleged to have advanced loan amount of Rs. 6.00 lakhs to the accused. In the complaint, he states that the loan was advanced in

the month of January 2006 whereas in Ex. D. 3 notice, it is stated that the loan was advanced in the month of March 2006. Further it is the case of

the complainant that he advanced hand loan of Rs. 6.00 lakhs to the accused and out of that the accused repaid Rs. 88,000/- to the complainant

by account payee cheque and to repay remaining amount of Rs. 5,12,000/-, the accused said to have issued two cheques for Rs. 2,52,000/- and

Rs. 2,62,000/- dated 13-3-2008. If the accused repaid Rs. 88,000/- by account payee cheque to the complainant, nothing prevented the

complainant from producing his bank pass book or from examining bank official. According to the complainant, he advanced loan in the month of

January 2006 and the accused issued cheque on 13-2-2008 towards repayment nearly after two years. No prudent person would advance such a

huge amount of loan without charging interest unless they are close relatives or friends. Moreover, the complainant is one of the partners of the firm

M/s. Syndicate Finance Corporation dealing in finance. Definitely he would not lend huge money without charging interest. It is equally true that no

person, much less, a prudent person would lend a huge amount of Rs. 6.00 lakhs to an unemployed person without any tangible security or surety

or without obtaining the security documents. The complainant is one of the partners of the firm and one Basavaraj is another partner of the firm.

When the partnership firm M/s. Syndicate Finance Corporation is engaged in finance business, it is unlikely that the partner in his individual

capacity would also lend money and do parallel business. It is borne out from Exs. D. 2 and D. 3-the notices issued by firm and the complainant

respectively to the accused that the accused had approached M/s. Syndicate Finance Corporation on earlier occasion and had obtained loan. In

that case approaching the partner in his individual capacity for the loan is highly improbable. When the complainant is one of the partners of M/s.

Syndicate Finance Corporation, a firm dealing in finance business, definitely the Corporation must have maintained the documents for having

advanced loan to various persons. There was no difficulty for the complainant being one of the partners from producing the documents pertaining

to the transactions between the accused and the firm. The complainant while doing parallel finance business in his individual capacity is expected to

maintain the records separately. The very fact that he has not maintained the records of the loan said to have been advanced to the accused

without charging interest for a period of two years creates a serious doubt as to the advancement of the loan to the accused. It appears to be

somewhat strange and unusual that towards the repayment of the remaining loan amount of Rs. 5,12,000/-, a person would issue two different

cheques of same date. The accused being an unemployed B.E. graduate, issuing two different cheques for a total sum of Rs. 5,12,000/- also

appears to be somewhat strange and cannot be imagined. In money matters Court expects more transparency. Thus from all these facts and

circumstances discussed and narrated above, I have no hesitation in holding that the complainant failed to prove the existence of debt of Rs.

5,12,000/-. On the other hand, accused has been able to probablise his defence and discharge the burden cast upon him that the cheque were not

issued towards the discharge of legally recoverable debt. I have every reason to accept the defence taken by the accused that out of four cheques

that were obtained by the Corporation as security at the time of advancement of the loan, two cheques have been misused by the complainant

though the accused has fully discharged the loan taken by him from Syndicate Finance Corporation of which the complainant is one of the partners.

Thus the learned Magistrate appreciated the evidence in its proper perspective and came to the right conclusion that the complainant failed to

establish the charge levelled against the accused. On my reappreciation of evidence, I am in full agreement with the conclusion reached by the

learned Magistrate. There is no substance in the appeal. Hence, I pass the following order:

The appeal is dismissed.