

(2016) 09 KAR CK 0045

KARNATAKA HIGH COURT

Case No: Criminal Petition No. 3144 of 2016

Dr. C. Sharath Kumar

APPELLANT

Vs

Smt. Nagalakshmi K

RESPONDENT

**Date of Decision:** Sept. 28, 2016

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Negotiable Instruments Act, 1881 (NI) - Section 138

**Citation:** (2016) ACD 1111

**Hon'ble Judges:** Anand Byrareddy, J.

**Bench:** Single Bench

**Advocate:** Smt. T.G. Sudha, Advocate, for the Petitioner

**Final Decision:** Disposed Off

**Judgement**

@JUDGMENTTAG-ORDER

**Anand Byrareddy, J.** - Heard the learned counsel for the petitioner. Notice to the respondent is dispensed with.

2. The petitioner is accused of an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The petitioner admits that such a cheque was issued, but the petitioner had instructed his banker to stop payment and it was for the following reasons:

It transpires that the respondent was a patient who had sought treatment in the petitioner's hospital known as "Mediwave IVF and Fertility Research Hospital" in Mysore. She underwent treatment which involves three cycles of In-vitro fertilisation treatment for women who had failed to conceive and it aids in such conception and therefore, the respondent is said to have spent a sum of Rs. 2,69,650/- and since the treatment was not a success and she was not able to conceive, it transpires that she came with a group of men and demanded that the entire amount which she had

spent towards the treatment be refunded. The petitioner resisted and had indicated that they had done their best and if the treatment has not worked, it was not their fault. It is at this that the respondent along with the aid of a group of men are said to have come to the IVF Centre and ransacked the hospital and destroyed expensive equipments and forced the petitioner to issue a cheque for the said sum of Rs. 2,69,650 which she had spent towards the treatment and on receiving the same, had left the place.

3. The petitioner had immediately lodged a police complaint of the events and had even instructed the Bank to stop payment. It is in this regard that after the cheque was presented by the respondent and it was dishonoured, that the complainant had initiated criminal proceedings. It is now the case of the petitioner that the treatment having failed is a fact and it was for the reason that the respondent had concealed the true facts as to her status. In that, though she was 44 years old, she had falsely stated that she was 31. She was a once married woman and she had not mentioned her earlier marriage and also undergone treatment under various other systems of medicine seeking to conceive, and all of which having failed, she had approached the petitioner. It is a known fact that IVF treatment may not work for women over 40 and this was a glaring circumstance under which the petitioner would not have treated the respondent at all, if he had known the truth that she was over 40. Notwithstanding all these glaring circumstances the treatment having failed, is no fault of the petitioner and since the cheque was issued in coercion, the same having been directed to be stopped payment, was wilful and there was no legal liability on the part of the petitioner to issue any such cheque. Therefore, the burden would be entirely on the respondent to demonstrate that there was a legal liability in respect of which the cheque has been issued.

4. However, the learned counsel for the petitioner would point out that having regard to these involved circumstances which would not be a subject-matter of an enquiry in a summary procedure for an offence punishable under Section 138 of the N.I. Act, it is well-nigh impossible for the petitioner to bring these circumstances on record and therefore is apprehensive that the complaint may be decided against the petitioner and therefore seeks the intervention of this court under Section 482 Cr. P. C. to address the admitted facts and circumstances.

The learned counsel would say that they are admitted facts and circumstances, as the complainant herself has not denied the sequence of events. She has not denied that she had obtained treatment from the petitioner's hospital and that the treatment was a failure and as a refund, the cheque had been issued by the petitioner. When she had failed to mention the other circumstances and the violations that were perpetrated on the premises and the damage to the equipments and the fear of harm which was under which the petitioner had issued the cheque. This however is the subject-matter of an independent criminal proceedings. If these circumstances can be demonstrated by production of material

documents such as the legal notices exchanged, the criminal complaint that is pending at the instance of the petitioner and if evidence is tendered on those circumstances, it is certain that the petitioner would discharge the burden which is cast under Section 139 of the N.I. Act.

5. Notwithstanding that the presumption is in favour of a holder of a cheque, if once the petitioner is enabled to discharge the burden of demonstrating that there was no legal liability, the court below is certainly bound to take notice of the same. The apprehension of the petitioner that the court may not entertain such evidence, is not correct. The court is bound to accept such evidence, which need not be elaborate, but could be demonstrated with reference to the relevant documents as already referred to. Further, the learned counsel for the petitioner would also plead that the petitioner is a busy medical practitioner and his repeated appearance before the criminal court causes great inconvenience and the court below may not entertain the applications for exemption as a matter of course.

This is yet another apprehension the petitioner pleads of the criminal proceedings pending causing inconvenience, hardship and injustice to the petitioner.

6. Insofar as the second grievance of the petitioner being unable to be present before the court on all occasions, it would be for the petitioner to make appropriate applications for exemption and if the court finds that there is good reason to grant such exemption, it would certainly be granted. However, it is made clear that it is always the discretion of the court below to insist upon the presence of the accused if his presence is essential or inevitable on any particular occasion. Therefore, the court shall certainly keep in view that the petitioner is a medical practitioner whose services would be required elsewhere and that the appearance of the petitioner before court on dates of hearing where his presence may not be essential, would certainly be kept in view. With those observations, the petition stands disposed of in the circumstances of the case.