

HIGH COURT OF KARNATAKA**Date of Decision: 18th January 2024****Bench: Justice G. Basavaraja**

CRIMINAL REVISION PETITION NO. 595 OF 2016

SMT. DIVYA SHREE K.V. ...PETITIONER**VERSUS****SRI R. RAJA ...RESPONDENT****Legislation:**

Section 138 of the Negotiable Instruments Act, 1881

Sections 61, 309, 70(2), 436, 445 of the Code of Criminal Procedure (Cr.P.C)

Section 114(e) of the Indian Evidence Act, 1872

Section 27 of the General Clauses Act

Subject:

The revision petition challenges the conviction and sentence under Section 138 of the Negotiable Instruments Act, 1881, involving a dishonored cheque of Rs.60,300, questioning the service of legal notice and the address of the accused.

Headnotes:

Dishonored Cheque and Legal Notice Service Dispute – Conviction under Section 138 of the Negotiable Instruments Act for dishonoring a cheque worth Rs.60,300 – Petitioner's argument on incorrect service of legal notice and incorrect address in the legal notice and complaint – Trial and Appellate Courts' judgments upheld by High Court. [Paras 3, 7, 13-14, 17-21]

Address Verification and Presumption under Law – High Court upholds presumption under Section 114(e) of the Indian Evidence Act and Section 27 of the General Clauses Act regarding the service of notice – Endorsements on RPAD cover and postal authorities' remarks considered valid – Accused's failure to rebut prosecution evidence or provide contrary proof of residence. [Paras 16-19]

Minor Contradictions in Complaint Details – High Court notes minor contradictions in the complaint regarding the date of loan and cheque issuance – Such contradictions deemed not significant enough to affect the case, as per precedent set in P. RASIYA v. ABDUL NAZER AND ANOTHER. [Para 20]

Revision Petition Dismissed – Petition challenging conviction and sentence under Section 138 of the Negotiable Instruments Act, 1881, dismissed – Conviction and order of sentence by lower courts confirmed – Accused directed to deposit the remaining fine amount within 30 days. [Paras 1, 21-22]

Referred Cases:

P. RASIYA v. ABDUL NAZER AND ANOTHER (Criminal Appeals No.1233-1235 of 2022)

GAJANAN KALLAPPA KADOLKAR v. APPASAHEB SIDDAMALLAPPA KAVERI (Criminal Revision Petition No.2011 of 2013)

Representing Advocates:

Petitioner: Sri Ramesh P. Kulkarni

Respondent: Sri D.S. Sridhar

ORDER

The Revision Petitioner has filed this Revision petition against the judgment of conviction and order of sentence dated 14th August, 2014 passed in CC No.26092 of 2011 by the V Additional Small Causes Judge and XXIV Additional Chief Metropolitan Magistrate, Mayo Hall Court, Bengaluru (for brevity, hereinafter referred to as the “trial Court”), which is confirmed by order dated 31st March, 2016 passed in Criminal Appeal NO.998 of 2014 by the LVII Additional City Civil and Sessions Judge, Mayo Hall Unit, Bengaluru (for brevity, hereinafter referred to as the “Appellate court”).

2. For the sake of convenience, the parties in this revision petition are referred to as per their status and rank before the trial Court.

3. Brief facts of the case are that, the accused and complainant are known to each other since many years and accused approached the complainant for hand loan in a sum of Rs.60,300/- in order to overcome her

urgent financial difficulties and other necessities. Hence, the complainant has paid an amount of Rs.60,300/- to the accused as loan. At the time of receiving the said amount, for the repayment of the same, the accused has issued Cheque bearing No.571381 dated 31st March, 2010, drawn on CitiBank NA Bangalore, for a sum of Rs.60,300/- in favour of the complainant, by assuring that the cheque will be honoured on its presentation. The complaint presented the same for encashment through his Banker Punjab National Bank, Vimanapura Branch, Bangalore but the same was returned on 02nd July, 2010 with an endorsement "insufficient funds". The complainant got issued legal notice to the accused through his counsel through RPAD and also under UCP on 14th July, 2010 by intimating about the dishonour of the cheque and also calling upon her to pay the cheque amount within 15 days from the date of receipt of the said notice. The said notice sent to the accused through RPAD dated 16th July, 2010 and UCP dated 17th July, 2010, returned with an endorsement "refused". Even after receipt of notice, accused has neither replied nor paid the cheque amount. Hence, the complainant has lodged complaint under Section 138 of the Negotiable Instruments Act, 1881.

4. After taking cognizance, case was registered in CC No.26092 of 2011 and summons was issued to the accused. Thereafter, warrant was also issued against the accused. The accused appeared before the Court through advocate and was enlarged on bail. The substance of accusation was recorded. The accused pleaded not guilty and claimed to be tried.

5. To prove the case of the accused, the complainant got himself examined as PW1 and marked six documents as Exhibit P1 to P6. After closure of complainant's side evidence, statement under Section 313 of Code of Criminal Procedure was recorded. Accused has totally denied the evidence of PW1 but has adduced the oral evidence as DW1-Rajesh and the notarized copy of election identity card of PW1 was marked as Exhibit D1.

6. Upon hearing both sides, the trial Court convicted the accused for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 and the accused was sentenced to pay fine of Rs.75,000/-. In default of payment of fine, the accused shall undergo simple imprisonment for a period of one year. Being aggrieved by the judgment of conviction and order of sentence passed by the trial Court, the accused preferred appeal before the Appellate Court. The appeal came to be dismissed on 31st March, 2016. Being aggrieved by the judgment of conviction and order of sentence passed by both the courts below, the accused is before this court in this revision petition.

7. Sri. Ramesh P. Kulkarni, learned counsel appearing for the Revision petitioner submits that both the courts have not properly appreciated the evidence on record in accordance with law and facts. The demand notice, as required under Section 138 of the Negotiable Instruments Act, 1881, is not served to the correct address of the petitioner. Petitioner is the resident of No.26-1, 3rd Street, Nehrupuram, Bengaluru, but the notice has been sent to wrong address, i.e. No.29, Ground Floor, Sepping's Road, Bengaluru. Refusal endorsement from the postal authorities to RPAD and UCP as "refused", is got done. In the evidence of PW1 at page No.7, expresses his ignorance about the address of the accused and he is unaware of the address of the accused. Refusal denied by the accused. There is nothing to show that the accused resided at No.29, Sepping's Road. But the accused has produced her voter ID as Exhibit D1 through her husband-DW1 as she was under post-delivery confinement. The postman is not examined by the complainant. PW1 says notice by RPAD sent on 16th July, 2010 and by UCP sent on 17th July, 2010. In the sworn statement it is stated notice sent on 14th July, 2010. Further, it is submitted that UCP returned as refused, as per the averments of the complainant. In page 6 of the evidence of PW1, he has

stated that he does not know what happened to UCP. Further, he submits that there is no proof of delivery of cheque, advancing loan and no proof of availability of funds to lend loan amount.

8. In legal notice, the complainant has not disclosed as to the exact date of lending loan to the accused. In the sworn statement of the complainant, he has stated that on 31st March, 2010, accused has issued the cheque on the date of receiving loan. Whereas, in the legal notice it is stated that only after several demands accused has issued the cheque, which is not in consistence with the averments made in the sworn statement by the complainant there are material omissions, contradictions and improvements in the evidence of the complainant. Both Courts have not considered the same. The appellate Court has observed that inference could be drawn, as witness has not stepped into witness box, which, apparently, is illegal as per provisions of Section 335 of Code of Criminal Procedure and Section 120 of Indian Evidence Act. Further, he submits that the date of loan and the date of delivery of cheque are not shown in the complaint. On all these grounds sought to allow this Revision Petition.

9. To substantiate his arguments, he relied upon various decisions of the Hon'ble Apex Court as well this Court which are as follows:

- (i) K.V VENKATESH VS. R. NATARAJ (2012 (5) KCCR 4213);
- (II) AJAYA INDUSTRIES VS GULSHAN RAI MALHOTRA (2014 ACD 535 P & H);
- (III) B. PADMAVATHI RAI V. PARVATHIAMMA (AIR 1976 KAR 97);
- (IV) B.V. THAMMAIAH VS. N. SHANKAR IN CRL. APPEAL NO.1542/2004 DECIDED ON 12TH APRIL, 2010;
- (V) M. SENGUTTUVAN VS. MAHADEVASWAMY (ILR 2007 KAR 2709);
- (VI) SHIVA MURTHY VS. AMRUTHRAJ (ILR 2008 KAR 4629);

- (VII) GOPAL KRISHANAJI KETKAR V. MOHAMMED HAJI LATIF AND OTHERS (AIR 1968 SC 1413);
- (VIII) JOHN K. ABRAHAM V. SIMON C. ABRAHAM AND ANR. (2014 CR.LJ.2304);
- (IX) BASALINGAPPA V. MUDIBASAPPA (AIR 2019 SC 1983)
- (X) BAIDYANATH PRASAD SRIVASTAVA V. STATE OF BIHAR (AIR 1968 SDC 1393);
- (XI) V. RAJA KUMARI V. P. SUBBARAMA NAIDU AND ANOTHER (AIR 2005 SC 109);
- (XII) VIJAYA KUMAR V. DEEPAK KUMAR (2021 ACD 927 (KAR)).

10. Respondent Counsel remained absent. Hence, arguments on behalf of the respondent is taken as nil.

11. Having heard the learned counsel for the petitioner and the learned High Court Government Pleader, the following points would arise for my consideration:

1. Whether the Revision petitioner has made out a ground to interfere with the impugned judgment of conviction and order of sentence passed under Section of 138 of Negotiable Instruments Act, 1881 which is confirmed by the Appellate Court?
2. Whether the Revision Petitioner has made out a ground to modify the sentence?
3. What order?

12. My answer to the above points is as under:

Point No.1: in the negative;

Point No.2: partly in the affirmative;

Point No.3: as per final order.

Regarding Point No.1:

13. I have carefully examined the material placed before this Court. It is the case of the complainant that the accused has issued a cheque for Rs.60,300/- for repayment of loan and the complainant presented the same through his Banker Punjab National Bank for clearance, but the same

returned with *shara* "insufficient funds". Though the complainant got issued legal notice on 14th July, 2010 it was also returned with *shara* "refused". Thus, accused has committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

14. PW1 has deposed in his evidence as to the dishonour of the cheque. After appreciating the evidence on record, the trial Court has convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and the Appellate court has confirmed the same.

15. The main argument advanced on behalf of Revision Petitioner is that the complaint has sent the notice to correct address of the accused and the accused has failed to comply with the mandatory provisions of Section 138 of the Negotiable Instruments Act, 1881. Both the Courts have not considered the same. To substantiate his argument, he has relied on the evidence of DW1-Rajesh who is the husband of the accused and Exhibit D1-voter identity card issued by the Election Commission of India which belongs to DW1-Rajasha. Exhibit P6 is the RPAD cover issued to the accused, in which the name and particulars of the accused is shown as under:

*"Divya Shree K.V,
D/o K.R. Vijayakumar
No.29, Ground Floor
Seppings Road
Next to Surya Bar Ihstri Hotel
Bangalore - 560 001"*

16. This RPAD returned with *shara* "refused." The copy of the summons issued to the accused under Section 61 of Code of Criminal Procedure reveals that the XIV Additional CMM, Mayo Hall Court, MG Road, Bangalore, has issued summons to the accused to the address shown in the complaint. The said notice came to be returned by the concerned police with *shara* "when the police went to serve summons to the accused, the

house of accused was locked. On enquiry with neighbours, the police came to know that the accused has gone out of station." The Order sheet dated 21st September, 2011 reveals that the Court has re-issued summons to the accused and the case was posted for 10th May, 2012. On that date the Presiding Officer was on leave and hence the case was adjourned to 30th June, 2012. Thereafter, the case record was transferred to XXIV ACMM Court, Bangalore as per Special Notification No.ADMI-3/12 dated 26th April, 2012 of CMM, Bangalore. This notice was issued to the accused through RPAD.

17. The RPAD cover returned to the court with shara "I/D (intimation delivered)". Thereafter, that on 04th April, 2013, the trial Court has issued non-bailable warrant to the accused and the case was posted on 11th February, 2013. In the meanwhile, that on 24th November, 2012, the advocate for the accused filed application under Section 309 Code of Criminal Procedure to advance the case from 11th February, 2013 to 24th November, 2012 for recalling non-bailable warrant and granting bail. On the same day, the application under Section 70(2) of Code of Criminal Procedure and Section 436 of Code of Criminal Procedure came to be filed. The advocate also filed application under Section 445 of Code of Criminal Procedure to release the accused on nominal cash security in lieu of surety. In all these applications, the accused has not denied the address of the accused furnished in the legal notice as well as in the complaint. The reasons assigned for recalling the non-bailable warrant was that, on the date of hearing, the accused was unable to appear before the Court as he was not keeping well. The accused has not denied the address shown in the legal notice and also in the complaint. In any of the applications, the accused has not stated that she has not received the summons from the Court through RPAD or *muddam* (through concerned process server). Only during the course of trial, the

accused has denied the address shown in the cause-title by the complaint and also the address shown in the legal notice on the ground that he is residing in address shown in the identity card issued by the Election Commission of India as per Exhibit D1. The accused has not made any allegation/accusation against the postal authorities. Therefore, the postal authority, being official entity, has endorsed on the postal cover that the accused has refused to receive the legal notice issued on behalf of the complainant and the postal authorities have also made endorsement on the RPAD cover issued by the Court as "I/D (intimation delivered)". There is a presumption under sub-Section (e) of Section 114 of Indian Evidence Act, 1872 that the Court may presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case, the court must presume that judicial and official acts have been regularly performed. Accordingly, the endorsement/*shara* made by the concerned postal authority have not been disputed by the accused and even the DW1 has not whispered anything against the postal authorities who have endorsed on the registered postal cover as "refused" and "I/D (intimation delivered)". Accordingly, the accused has failed to rebut the prosecution evidence under Section 114(e) of the Indian Evidence Act, 1872.

18. Apart from this, the complainant has also sent legal notice to the accused through certificate of posting under Section 27 of General Clauses Act. The same reads as under:

"27. Meaning of service by post.-

Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression serve or either of the expressions give or send or any other expression is used, then, unless a different intention

appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

19. The accused has failed to produce legal evidence to rebut the prosecution evidence under Section 27 of the General Clauses Act. On the contrary, during the course of cross-examination of DW1, he has clearly admitted that when the police have brought the summons, he came to know about this case. This admission will falsify the defence set up by the accused that the court summons was not served on the accused. Though the husband of the accused came to know about the summons issued by the Court through police, the accused has not appeared before the Court and was watching the proceedings sitting on the fence. Only when the Court has issued non-bailable warrant, on the next day, the accused appeared before the Court and took bail. This conduct of the accused and also the evidence of DW1, who is the husband of the accused, reveals that though they had knowledge about the legal notice issued by the complainant and also filing of the complaint against her, intentionally, and willfully, the accused has avoided the court summons. Hence, the defence set up by the accused cannot be accepted. Moreover, the accused has not produced any document to show that she was not residing in the address shown in the legal notice as well as in the complaint. As per Exhibit D1, the accused might have resided in the address shown in the identity card issued by the Election Commission of India. But, this is not sufficient to come to the conclusion that the accused was not residing in the address to which the legal notice was issued by the complainant as on the date of issuing notice and filing of this complaint. On this ground also, the defence set up by the accused cannot be accepted.

20. Another argument submitted by the accused is that in the sworn statement of the complaint, he has stated that on 31st March, 2010 the accused has issued the cheque on the date of receiving the loan amount, whereas in the legal notice it is stated that only after several demands, accused has issued the cheque which is not considered in the averments made in the statement, hence, the complaint is not maintainable in law. Since there is a presumption under Section 139 of Negotiable Instruments Act, 1881, this minor contradiction of omission will not affect the case of the complainant. This view of mine is fortified by the judgment of the Hon'ble Supreme Court in the case of P. RASIYA v. ABDUL NAZER AND ANOTHER rendered in Criminal Appeals No.1233-1235 of 2022 decided on 12th August, 2022, which is followed by this Court in the case of GAJANAN KALLAPPA KADOLKAR v. APPASAHEB SIDDAMALLAPPA KAVERI rendered in Criminal Revision Petition No.2011 of 2013 disposed of on 18th November, 2022. On this ground also, the arguments advanced by the learned counsel for the revisions petitioners cannot be accepted.

21. Exhibit P1-cheque dated 31st March, 2010 reveals that the accused has issued cheque in favour of the complainant for Rs.60,300/- and the same was presented by the complainant through his banker Punjab National Bank which came to be returned as "insufficient funds". Thereafter, within the time complainant got issued legal notice to the accused through RPAD and also through UCP. Even after receiving the said notices, the accused has not paid the cheque amount. Thereafter, the complaint has lodged complaint under Section 138 of the Negotiable Instruments Act, 1881. Accordingly, the complainant has complied with the essential ingredients of Section 138 of the Negotiable Instruments Act, 1881. Both courts have properly appreciated the evidence on record in accordance with law and facts and even on reappraisal/re-examination and re-consideration of the entire

evidence on record with the background of the arguments advanced on behalf of the revision petitioner, I do not find any illegality/legal infirmity, in the impugned judgment of conviction and order of sentence passed by the trial Court which is confirmed by the Appellate Court. Accordingly, I answer Point No.1 in the negative.

Regarding Point No.2:

22. For the aforesaid reasons and discussions, I proceed to pass the following:

ORDER

1. Revision petition dismissed;
2. Judgment of conviction and order of sentence dated 14th August, 2014 passed in CC No.26092 of 2011 by the V Additional Small Causes Judge and XXIV Additional Chief Metropolitan Magistrate, Mayo Hall Court, Bengaluru, which is confirmed by order dated 31st March, 2016 passed in Criminal Appeal NO.998 of 2014 by the LVII Additional City Civil and Sessions Judge, Mayo Hall Unit, Bengaluru, are confirmed;
3. The complainant is permitted to receive the deposited amount of Rs.6,030/- which is deposed in Q.R.No.02902234 dated 07th October, 2014;
4. The cash security of Rs.5,000/- deposited by the accused via R No.0283415 dated 24th November, 2012 shall be confiscated to Government towards fine amount as per the order of the trial Court;
5. The accused shall deposit the remaining amount within thirty days from the date of this order;
6. Send the trial Court records along with the copy of this order to the concerned courts.

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