

HIGH COURT OF KARNATAKA

Bench: JUSTICE J.M.KHAZI

DATED: 18 January, 2024

CRIMINAL REVISION PETITION NO.573 OF 2019

SRI H R SHESHADRI ...PETITIONER

VERSUS

SRI U V NATARAJ ...RESPONDENT

Legislation:

Section 138 of the Negotiable Instruments Act (N.I Act)

Section 397 and 401 of the Code of Criminal Procedure (Cr.P.C)

Subject: Revision petition challenging the conviction and sentence for an offense under Section 138 of the N.I Act involving a dishonored cheque due to 'Stop Payment' instruction, with contentions on signature authenticity and financial capacity of the complainant.

Headnotes:

Dishonored Cheque and Conviction Challenge - Accused petitioner appeals against conviction and sentence imposed by the trial court and confirmed by the Sessions Court for offense under Section 138 of the N.I Act - Accused contends cheque was not issued for legally enforceable debt and challenges the signature's authenticity on the cheque - Petition filed under Section 397 r/w 401 of Cr.P.C. [Para 1, 14, 16]

Signature Authenticity Dispute - Accused denies signature on dishonored cheque, which was returned for 'Stop Payment' - Complainant failed to prove

the signature on the cheque was of the accused, a key element not addressed by the trial and appellate court [Paras 14, 16]

Financial Capacity of Complainant Questioned - Accused questions complainant's capacity to lend Rs.4,15,000 - Complainant's failure to prove financial capacity to lend the said amount - High Court considers this aspect significant, especially as the loan was allegedly given in cash [Paras 20, 21]

Decision - High Court sets aside the trial court and Sessions Court's orders, acquitting the accused under Section 138 of N.I Act - Noted failure of complainant to prove signature authenticity and financial capacity - Bail bond of accused discharged [Paras 22, (i)-(iv)]

Referred Cases:

- APS Forex vs Shakti International Fashion Linkers Pvt. Ltd (2020) 12 SCC 724

Representing Advocates:

Petitioner - Smt. K.M.Archana, Amicus Curiae

Respondent - Sri. Hemanth Kumar D, Advocate

ORDER

1. Being, aggrieved by the conviction and sentence imposed by the trial Court for the offence punishable under Section 138 of N.I Act, which came to be confirmed by the Sessions Court, the accused is before this Court in a petition under Section 397 r/w 401 Cr.P.C.
2. For the sake of convenience, the parties are referred to by their rank before the trial Court.
3. Complainant filed a complaint against accused alleging that he and accused are known to each other since many years through the brother-in-law of complainant by name M Shivaswamy. Due to this acquaintance, during

the month of January 2013, accused requested the complainant for hand loan of Rs.4,15,000/- to meet his financial difficulty. He promised to repay the same within three months. On 20.01.2013, complainant paid a sum of Rs.4,15,000/- to the accused in the house of M.Shivaswamy at Hassan. Accused issued the subject cheque dated 30.04.2013 with an assurance to collect the same from his Bank. However, on 30.04.2013, when complainant presented the cheque for realisation, it was dishonoured with an endorsement "Payment stopped". In this regard, complainant got issued legal notice to the accused. It is duly served on him. Instead of making payment, the accused has sent an evasive reply. Without any alternative, the complaint is filed.

4. After service of notice, accused appeared through counsel and contested the matter, contending that on account of difference of opinion with his sister Gayathri, she has taken away the property documents, cheques belonging to the accused and other documents. Despite his request, she did not choose to return them. Though accused tried to lodge complaint against Gayathri, she managed to see that the complaint is not registered. Therefore accused instructed the Bank for 'Stop Payment', if the said cheques are presented. He has denied of having borrowed Rs.4,15,000/- and issued the subject cheque towards repayment of the same. At the trial, the accused has also challenged the financial apacity of the complainant to lend him Rs.4,15,000/-.

5. Accused pleaded not guilty and claimed trial.

6. In order to prove the allegations against the accused, the complainant examined himself as PW-1, his brother-in-law M. Shivaswamy as PW-2 and relied upon Ex.P1 to 6.

7. During the course of his statement under Section 313 Cr.P.C, the accused has denied the incriminating evidence led by the complainant.

8. In fact, the accused has examined himself as DW-1 and his mother as DW-2. He has relied upon Ex.D1.

9. The trial Court accepted the contention of the complainant and convicted the accused and sentenced him to pay fine Rs.6,95,125/- with the default sentence.

10. The Sessions Court also did not accepted the defence of the accused and dismissed the appeal filed by him.

11. Being aggrieved by the judgment and order of trial Court as well as the Sessions Court, accused is before this Court, contending that the First Appellate Court as well as the trial Court have erred in appreciating the facts

and documents produced by the accused and convicting him. It is against law, facts and probability of the case. The Sessions Court has failed to appreciate the mistake committed by the trial Court in convicting him. Both Courts below have erred in holding that the accused has failed to rebut the presumption under Section 139 of N.I Act. Though accused has produced copy of agreement of sale, order sheet in O.S.No.9/2014 and written statement along with the memo, the trial Court has failed to look into the same. Viewed from any angle, the impugned judgment and order of trial Court and Sessions Court are not tenable and pray to set aside the same by allowing the petition.

12. On the other hand, the learned counsel representing complainant has supported the impugned judgments and orders and prays to dismiss the petition.

13. Heard elaborate argument of both sides and perused the record.

14. Though the accused admit that the cheque in question is drawn on his account, maintained with his banker, he has denied that it bears his signature. Of course, he has also denied of having borrowed hand loan of Rs.4,15,000/- from the complainant and issued the cheque towards repayment at the same. Since the accused disputed that the cheque in question marked at Ex.P1 bears his signature, it is also necessary for the complainant to prove that the cheque in question bears his signature.

15. At the outset, it is relevant to note that in the present case, the cheque is not dishonoured for want of sufficient funds. On the other hand, it is returned with an endorsement that accused has instructed 'Stop payment'. Consequently, the Bank had no occasion to examine whether the signature in the cheque is that of accused. In fact, in the reply notice itself, the accused has made an allegation that the cheque was stolen by his sister Gayathri and she may have handed it over to the complainant. It is not his case that it was a signed blank cheque.

16. It is the specific defence of the accused that the subject cheque does not bear his signature. Therefore, it was incumbent upon the complainant to prove that the signature in the cheque is that of accused. Even though during his cross-examination, the complainant has deposed that the subject cheque bear the signature of accused and he has handed over it to him after affixing his signature, the complainant has failed to get the signature marked. Had the cheque was dishonoured for insufficient funds, there was no necessity for the complainant to prove the signature therein as that of the accused. Since the cheque is returned only on the ground that payment stopped, the complainant

ought to have got the signature in the cheque marked and if necessary to get it examined by the handwriting expert. The complainant has not chosen to prove the signature on the cheque as belonging to the accused.

17. The evidence given by the accused and his mother Smt Indira prove the fact that two of the sisters of accused including Gayathri had love marriage and only after about one year of their marriage, they were allowed to come to their parental house. When Gayathri had a quarrel with her husband, she stayed for sometime in the house of complainant and their mother. During this period, difference of opinion arose between Gayathri and complainant and his other and while leaving the house, she took away property documents and also some of the cheques belonging to the accused. When she did not return the cheque, accused tried to lodge a complaint. However, when the concerned police did not oblige to register the complaint, he gave instructions to the bank to stop payment and accordingly the cheque was not honoured, on stop payment instructions.

18. It appears claiming that accused has executed a sale agreement to sell his residential house for a sum of Rs.14,60,000/- and received advance of Rs.13 lakhs, a original suit is filed for specific performance. During his cross-examination, accused has admitted a suggestion that such a suit is filed, but denied that he has executed such agreement. However, the complainant has not produced the said documents to ascertain when the said sale agreement was executed and when the suit is filed. It could have thrown some light on the present case to ascertain whether the relationship between the parties was cordial when the accused alledgedly borrowed loan of Rs.4,15,000/- from the complainant. If at all, the accused has executed sale agreement and received advance of Rs.13 lakhs, a question would arise as to what was the legal necessity for him to again borrow a sum of Rs.4,15,000/- by issuing the subject cheque.

19. It is pertinent to note that during the crossexamination of PW-2, the counsel for accused has made a suggestion that accused requested him for a hand loan and he got it from his brother-in-law i.e Complainant. Throughout, right from the time when the reply notice was given and during the cross-examination of PW-1 and 2 and also during the evidence of DW-1 and 2, including their cross-examination, the accused has consistently maintained that he never borrowed any hand loan from the complainant and based on stolen cheque, the complaint is instituted. Such being the case, it appears

the suggestion made by the learned counsel for accused is a mistake and it cannot be termed as an admission. 20. Now coming to the defence of the accused that complainant had no financial capacity to lend him Rs.4,15,000/- . At this stage, it is relevant to mention that in the reply notice the accused has not disputed the financial capacity of complainant. It is understandable that since the accused has entirely denied the allegations of he having borrowed hand loan of Rs.4,15,000/- and disputed that the cheque in question bears his signature, probably he did not find it necessary to dispute the financial capacity of accused in the reply notice. However, during the cross-examination of complainant he has raised this issue. As held by the Hon'ble Supreme Court in APS Forex vs Shakti International FashionCourt Linkers Pvt. Ltd (APS Forex) (2020) 12 SCC 724 , whenever accused rises, issue of financial capacity of complainant, in support of his probable defence, despite presumption in favour of complainant regarding legally enforceable debt under Section 139 of N.I Act, onus shifts again on the complainant to prove his financial capacity by leading evidence, more particularly when it is a case of giving loan by cash and thereafter issue of cheque.

21. In the light of ratio in APS forex, it is for the complainant to prove that at the time when he allegedly gave hand loan of Rs.4,15,000/- he had financial capacity to lend the said amount. On this aspect, during his cross-examination, the complainant has deposed that he is a coffee planter and he was having cash in respect of sale of coffee since 2-3 years. He is not assessee to Income tax. During his cross-examination a suggestion is made to the complainant that he has taken loan for raising coffee crop which he has admitted. Though this suggestion indicates that he is having coffee plantation, he complainant has not chosen to produce any documents to show the exact income by coffee plantation. He could have produced some documents to show the sale of coffee to ascertain his probable income. That the complainant has not only failed to prove that the subject cheque bears the signature of the accused and also that at the relevant point of time he had sufficient income to lend a sum of Rs.4,15,000/- to the accused.

22. Without examining these aspects, the trial Court as well as the Sessions Court have proceeded to convict the accused solely on the ground that presumption is operating in favour of the complainant and that accused has failed to rebut the presumption. The judgment and order of the trial Court as well as the Sessions Court have caused gross miscarriage of justice and

suffers from manifest illegality and perversity calling for interference by this Court. In the result, the petition succeeds and accordingly the following:

ORDER

- (i) Petition filed by the accused under Section 397 r/w 401 Cr.P.C is allowed.
- (ii) The impugned judgment and order dated 09.03.2018 in C.C.No.943/2013 on the file of VI Addl.Civil Judge and JMFC, Hassan and judgment and order dated 06.02.2019 in CrI.A.No.69/2018 on the file of III Addl.District and Sessions Judge, Hassan are set aside.
- (iii) Consequently, accused is acquitted for the offence punishable under Section 138 of N.I Act. His bail bond stands discharged.
- (iv) The Registry is directed to send back the trial Court and Sessions Court records along with copy of this order forthwith. Appreciation is placed on record for the valuable assistance rendered by the learned Amicus Curiae representing petitioner/accused. The fees of learned Amicus Curiae is fixed at Rs.5,000/-. The High Court Legal Services Committee is directed to pay the same.

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