HIGH COURT OF KARNATAKA

Date of Decision: 8th April 2024.

Bench : HON'BLE MR JUSTICE UMESH M ADIGA

CRIMINAL REVISION PETITION NO. 127 OF 2015

V. SRINIVAS S/O. LATE VENKATARAMAIAH, AGED ABOUT 35 YEARS, BENGALURU …PETITIONER

Versus

V. KRISHNAMURTHY S/O V.V.CHALAPATHI, AGED ABOUT 64 YEARS, BENGALURU …RESPONDENT

Legislation:

Sections 397 and 401 of the Code of Criminal Procedure, 1973 (Cr.P.C.) - Section 138 of the Negotiable Instruments Act, 1881 (N.I. Act)

Subject:

Revision petition challenging the judgment and order confirming the conviction and sentence under Section 138 of the N.I. Act for dishonor of cheques issued towards repayment of a debt.

Headnotes:

Section 138 of the Negotiable Instruments Act (N.I. Act) – Petitioner challenges the judgment and order of conviction and sentencing by the lower courts – Petitioner alleged to have borrowed a sum of Rs. 8,00,000/- from the complainant and issued three cheques which were dishonored – Trial court convicted the petitioner, and the appellate court affirmed the judgment – Petitioner filed a revision petition challenging the lower courts' orders. [Paras 1-26]

Validity of Conviction under Section 138 of N.I. Act – Analysis – Complainant proved the issuance of the cheques and their dishonor – Petitioner's defense was inconsistent and failed to disprove the allegations – Accused's contentions regarding loss of cheques lacked credibility – Accused's attempt to introduce new grounds in the revision petition not tenable – Accused's reliance on case law deemed inapplicable to the present case – Accused failed to rebut the presumption under Sections 118 and 139 of N.I. Act. [Paras 10-17]

Consideration of Additional Grounds – Income Tax Act Violation – Accused's argument regarding the violation of the Income Tax Act by the complainant not tenable – Violation of Income Tax Act not a ground for acquitting the accused of the offense under N.I. Act – Accused's attempt to introduce new ground rejected. [Paras 20-22]

Sentence Imposed – Modification – Court finds the sentence of imprisonment for six months disproportionate considering the nature of the offense and circumstances of the case – Imposition of fine of Rs. 16,00,000/- considered justifiable – Sentence modified accordingly. [Paras 24-25]

Decision – Partial Allowance of Revision Petition – Conviction under Section 138 of N.I. Act confirmed – Sentence of imprisonment set aside, and fine of Rs. 16,00,000/- imposed in default of payment – Forty-five days granted to deposit fine or undergo default sentence – Remaining operative portion of lower court's order confirmed. [Para 26]

Referred Cases:

- Rangappa vs. Mohan - Cite as needed based on available data
- Yeshwanth Kumar Vs. Shanth Kumar N - Criminal Appeal No.939/2010, dated 07.08.2019
- K.V. Subba Reddy Vs. N. Raghava Reddy - Criminal Appeal No.545/2010, dated 28.02.2014

- K. Subramani Vs. K. Damodhara Naidu - (2015) 1 SCC 99
- Krishna Janardhana Bhat Vs. Dattatreya G. Hegde - AIR 2008 SC 1325
- K.George Varghese Vs. State of Karnataka - ILR 2010 KAR 4993

Representing Advocates:

Petitioner: Sri. S.G. Bhagavan

Respondent: Sri G.V. Dayananda

ORDER

This revision petition is filed by accused – appellant in Crl.A. No.963/2014 challenging judgment passed in the said case dated 22.01.2015 by the learned Additional City Civil and Session Judge, Bengaluru and confirming judgment passed by the XVI Addl. C.M.M. Court, Bengaluru in C.C. No.29645/2005 dated 26.08.2014 convicting and sentencing accused for the offence punishable under Section 138 of Negotiable Instruments Act (hereinafter referred to as, for short *"N.I. Act"*).

2. I refer the parties as per their rank before the trial Court.

3. It is the case of respondent – complainant that accused is very well known to him about five years prior to the filing of complaint. Accused was a business man and dealing with cheque discounting business with complainant. Accused borrowed a sum of Rs.8,00,000/- from complainant and agreed to repay the same with interest at the rate of 24% per annum. The accused to discharge the said legally enforceable debt, had issued three cheques bearing Nos.695594, 695595 and 695593 for Rs.2,50,000/-, Rs.3,00,000/- and Rs.2,50,000/- dated 16.03.2005, 18.03.2005 and 20.03.2005 respectively.

4. The complainant presented all the said three cheques through his banker for collection on 24.06.2005. All the three cheques were returned without encashment, with an endorsement of the banker dated 25.06.2005 that "funds insufficient". Complainant issued notice to the accused – revision petitioner, calling upon him to pay the amount of cheque. Notice was served

on the accused. However, he did not repay the amount of cheque. On the contrary, he issued reply notice with false contentions. Thereafter, complainant has filed private complaint before the trial Court alleging that accused has committed an offence punishable under Section 138 of N.I. Act. The trial Court after following the prescribed procedures under the provisions of Cr.P.C., and N.I. Act, issued process against the accused – revision petitioner.

5. Revision petitioner had appeared before the trial Court and pleaded not guilty. Complainant, to prove his case, examined PWs.1 and 2 and got marked Exs.P1 to P15 and closed his evidence. Thereafter, the learned trial Judge examined the accused under Section 313 of Cr.P.C. The accused examined himself as DW1 and got marked Exs.D1 to D8. The learned trial Judge after hearing both the parties and appreciating evidence on record, vide judgment dated 26.08.2014, convicted the accused of the offence punishable under Section 138 of N.I. Act and sentenced him to undergo simple imprisonment for six months and pay fine of Rs.16,00,000/-. In default of payment of fine, he shall undergo simple imprisonment for 45 days. Out of the fine amount Rs.15,00,000/- shall be paid to complainant towards compensation.

6. Accused challenged the said judgment before the Sessions Court in Crl.A. No.963/2014. The first appellate Court after hearing both the parties and re-appreciating evidence on record, vide impugned judgment dated 22.01.2015 dismissed the appeal and confirmed judgment and sentence passed by the trial Court. Challenging the same, accused preferred this revision petition under Section 397 of Cr.P.C.

7. I have heard the arguments of learned counsel appearing for both the side.

8. Following point emerges for my determination:

"1. Whether the first appellate Judge is justified in confirming judgment passed by the trial Court in C.C. No.29645/2005 convicting accused for the offence punishable under Section 138 of N.I. Act?

2. Whether sentence imposed against the accused is proportionate and justifiable?"

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9. It is settled principle of a law that revisional Court has limited jurisdiction to interfere in the orders/judgments challenged before it. It can only interfere in the same after satisfying itself as to the correctness, legality or propriety of any findings, sentence or order passed by the Courts subordinate to it. Therefore, there is no need to re-appreciate the evidence available on record.

10. Accused – revision petitioner has denied entire transaction alleged in the complaint. Complainant himself was examined as PW-1. In his evidence, he has reiterated case made out in the complaint. His oral evidence is corroborated by Exs.P1 to P10. On perusal of the entire cross-examination and suggestions made to PW1 indicates that accused has accepted the case of complainant. The suggestions made by the accused in the cross-examination of PW1 are in the following line:

"All the three cheques of this case were given to us on 23.02.2005 from the accused for discount purpose. We have calculated the interest on those 3 cheques at 24% from 23.02.2005, to the dates mentioned on them. ---- ---"

"It is true that I have deducted the interest amount on those cheques and the remaining amount was given to the accused on that day on all the 3 cheques. Accused was doing cheque discount business with us since last 5 years.------ "

"It is false to suggest that these 3 cheques given by this accused with blank status on that day. Further, it is false to suggest that myself filled up all the 3 cheques of this case.------"

"It is false to suggest that I have not at all paid any amount under these 3 cheques to the accused. It is false to suggest, that I agreed to pay Rs.8 lakhs to the accused through these cheques but failed the pay the same to the accused".

11. Accused appears to be under confusion. Once he says that he has signed the blank cheques and in the crossexamination of PW2, he denies his signature on the said cheques and in the next breathe, he

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suggests that signatures on the cheques are forged. The defense of the accused is not consistent to disprove the proven contention of the complainant.

12. It is the contention of the accused that he had kept few blank cheques, four keys of his house and cash of Rs.600/- in a bag and kept the bag in his two wheeler while going from his house to Yeshwanthpura, Bengaluru. On the way, when he reached near Varadaraja Petrol Pump, he found that the said bag was missing and he lodged the complaint in this regard as per Ex.D3 in subramanyanagara Police Station. In the complaint, there is no reference regarding filling of the all the columns of the cheque and signing on the cheque. It appears, he lost about 17 cheques and has remembered the numbers of said cheques, which is noted in Ex.D3. There is no explanation for carrying the said cheque leaves with him. During the course of the trial, a case was made out that his father had obtained a loan from the Bank to purchase a car. His father use to transfer amount to his account in Canara Bank and thereafter, he uses to issue cheque to pay EMI. He was always carrying the cheque leaves with him. The said explanation is not probable. From considering the entire evidence available on record, it appears, it is a pre-meditated crime committed by the accused.

13. It is pertinent to note that when notice was issued to the accused by the complainant about dishonour of three cheques, he came to know that cheques lost by him were found to complainant and has misused them. But the accused immediately did not go to the police station to persuade his complaint – Ex.D3. However, he did not take any action in this regard, which he has admitted in his cross-examination. Even he did not bother to know about loss of remaining fourteen cheque leaves. There is no explanation in this regard. It also indicate that just to evade re-payment of the amount, a story might be fabricated by the accused that he lost cheque leaves and complainant found by three cheques and he misused the same. Therefore, the defense of the accused is not probable.

14. The revision petitioner though had not taken such defences before the trial Court or such grounds before the appellate Court, but tried to make out new grounds in this revision petition and on such grounds, he cannot challenge the impugned judgment or order. Therefore, the contention of learned counsel for revision petitioner that respondent had no source of income to pay the amount of Rs.8,00,000/- to the accused and he had not

produced any books of account to prove the said contention, are not tenable. In the cross examination of PW1, he has stated that he has been doing cheque discounting business and always he has Rs.10 to 15 lakhs cash with him as working capital, it is not denied by accused. Appellate Court in the impugned judgment, following law laid down by the Hon'ble Apex Court in the case of ***Rangappa vs. Mohan***[1] held that the complainant has *prima facie* proved his source of income and that was not denied or disputed by the accused. Therefore, accused has not rebutted the same. There is no error in the said findings.

15. The learned advocate for the petitioner has relied on the following judgments:

i. Criminal appeal No.939/2010 – Yeshwanth Kumar Vs. Shanth Kumar N dated

07.08.2019.

ii. Criminal Appeal No.545/2010 – K.V. Subba Reddy Vs. N. Raghava Reddy dated 28.02.2014. iii. (2015) 1 SCC 99 – K. Subramani Vs. K.
Damodhara Naidu.

iv. AIR 2008 SC 1325 – Krishna Janardhana Bhat Vs. Dattatreya G. Hegde.

v. ILR 2010 KAR 4993 - K.George Varghese Vs. State of Karnataka.

16. In the case of ***Yeshwanth Kumar*** (referred supra), the Co-ordinate Bench of this Court appreciating the evidence available on record held that evidence of complainant was not consistent. Therefore, disbelieved the evidence. That is not the fact of the present case. Therefore, it is not applicable to the facts of the present case.

17. The law laid down in the case of ***K.V. Subba Reddy vs. Raghupathy Reddy*** (referred supra), which was also cited by the appellant before the First Appellate Court, does not help his contention. In that case also, re-appreciating the evidence, co-ordinate Bench of this Court, held that evidence of complaint was not reliable, hence, dismissed the appeal filed by the complainant. In this case, evidence of complainant is believable and he

[1] *AIR (2010) SC 1898*

proved the guilt of the accused beyond all reasonable doubt. Accused failed to rebut the presumption available to the complainant under Sections 118 and 139 of N.I. Act and disprove his case. Therefore, it does not help the contention of accused.

18. The learned advocate for petitioner has also relied on the judgment of Hon'ble Apex Court in the cases of ***K. Subramani*** and ***Krishna Janardhana Bhat*** (*referred supra).* The law laid down in this judgment is impliedly over ruled in the case of ***Rangappa vs. Mohan*** (referred supra). Hence it will not help the contention of revision petitioner.

19. The law laid down in the case of ***K.George Varghese*** (referred supra) is also not applicable to the facts of the present case. Facts of both the case are totally different. In this case, the learned trial Judge on verifying allegations in the complaint, took cognizance of the complaint which is absent in the said case. As per Section 190 of Cr.P.C., there is no need to assign the reasons to take cognizance of the complaint. In this case, the learned trial Judge has noted taking of cognizance in his hand writing. Therefore, on that count, impugned judgment cannot be considered as arbitrary or illegal.

20. The learned counsel for petitioner has submitted that as per the provisions of Income Tax Act any payment exceeding Rs.20,000/- per day shall be made through cheque or electronic transfer. In this case, the complainant has alleged that he paid Rs.8,00,000/- in cash on the same day to the accused. Therefore, the said payment is contrary to the provisions of the Income Tax Act and hence, it cannot be considered as legally enforceable debt. This is also new ground taken out in this revision petition.

21. Section 269SS of Income Tax Act, which reads as under:

"269SS. No person shall take or accept from any other person (hereinafter referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed], if,-

(a) xxx

(b) xxx"

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22. Above Section is contrary to the contention of accused. The acts of the accused in this regard may amount to violation of provision Income Tax Act by the accused for which he might be responsible. Violation of the said provision cannot be a ground to hold that complainant has lost his right to recover the debt paid to the accused or accused can take the said defense for non repayment of debt to the complainant. On the basis of the said defect in the transaction, accused cannot be acquitted.

23. The learned first appellate judge has considered the grounds urged before him and brightly dismissed the appeal. There is no error in the said findings of the first appellate judge to interfere with the said findings. Accordingly, I answer question No.1 in the *'affirmative'*.

24. The alleged offence for which the trial Court had convicted the accused is punishable under Section 138 of N.I. Act. It is a quasi criminal in nature. The main object to pass the said enactment by the legislature is to create trust, belief and confidence in the banking transactions. The intention of legislature is not to send an accused to jail for committing such an offence. It is not the case of the complainant that accused is habitual offender. Considering facts and circumstance of present case, the sentence imposed by the trial Court, sentencing accused to undergo imprisonment for a period of six months is a harsh punishment and disproportionate to the offence committed by him, which needs to be set aside.

25. Under Section 138 of N.I. Act, the Court can sentence an accused with imprisonment for a term, which may extend to two years or with fine which may extend to twice the amount of cheque or with both. The cheques were issued during March, 2005. The matter is pending for last about 20 years and complainant is out of reach of the amount given to accused. Had he kept the said amount in the Bank, he could have earned interest on the amount lent to the accused. Considering these facts and circumstances the fine imposed by the trial Court is justifiable and proper. It does not call for any interference. Accordingly, I answer point No.2 partly in the affirmative.

26. For the reasons stated above, I proceed to pass the following:

ORDER

i. The revision petition is ***Partly-allowed.***

ii. Conviction of the accused – revision petitioner under Section 138 of N.I. Act is confirmed.

iii. Sentence imposed by the trial Court in C.C. No.29645/2005 dated 26.08.2014 is modified. Sentence of imprisonment imposed by the Courts below is set aside. Accused is sentenced to pay fine of Rs.16,00,000/-, in default of payment of fine, he shall undergo imprisonment for a period of six months.

iv. Forty-Five (45) days' time is granted to the accused – revision petitioner to deposit the fine amount before the trial Court or shall surrender before the trial Court to undergo default sentence.

v. Remaining operative portion of impugned order of trial Court is confirmed by Appellate Court is not disturbed.

vi. Registry is directed to send back trial Court records forthwith alongwith the copy of the judgment.

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