

(2015) 11 KAR CK 0213

In the Karnataka High Court

Case No : Criminal Petition No. 3092/2014

Forever Precious Jewellery

APPELLANT

Vs

Balaaji Designer Jewellery and Others

RESPONDENT

Date of Decision : 02-11-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 397(2), 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2015) 11 KAR CK 0213

Hon'ble Judges : Rathnakala, J.

Bench : Single Bench

Advocate : S. Manjunatha, Advocate, for the Appellant; B. Jayaprakash Shetty, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rathnakala, J.—The petitioner is before this Court aggrieved by the order of the learned Magistrate as at Annexure-A, which has not been interfered by the Sessions Court.

2. The fact is, the petitioner filed a private complaint against the respondent in respect of the offence punishable under Section 138 of the Negotiable Instruments Act. The accused/respondent appeared, pleaded not guilty to the accusation framed by the Court and the trial begun. After recording of the evidence of the complainant and the defence, the case was set down for argument. At that stage, the complainant filed an application under Section 311 of Cr.P.C., seeking permission to adduce further evidence.

3. It was the case of the complainant that, before filing this complaint, he had issued demand notice to the accused and the accused in his reply notice, had admitted his liability and also had admitted about issuing the cheque towards his legal liability, but during the cross-examination, he has denied above facts and taken a defence that he was not the Proprietor of M/s. Balaji Jewelers and M/s. Balaji Designer Jewelry of which he was the Proprietor (which according to the

complainant had business transacted with the complainant). Under the circumstance, it has become necessary for him to produce the ledger and other documents to prove the transaction between both parties.

4. The application was contested by the respondent mainly on the ground that, after completion of the evidence, such application is not maintainable and the complainant ought to have produced the documents at the appropriate stage.

5. The learned Magistrate while rejecting the application in the body of his order observed that, it is a summary proceedings of the year 2009 and the documents now intended to be marked were not referred in the complaint or in the affidavit evidence of PW-1; without there being any pleading or proof and without explaining the relevancy of the documents, the application is not maintainable.

6. In appeal, the learned Sessions Judge held that, no appeal is provided under the Code of Criminal Procedure against an order passed under Section 311 of Cr.P.C. and dismissed the appeal without going to merits of the order impugned.

7. Sri. Manjunatha S., learned Counsel appearing for the petitioner submits that, since the appeal preferred by him was dismissed as not maintainable, he has no other avenue to challenge the order except invoking the jurisdiction of this Court under Section 482 of Cr.P.C. With regard to the merits of the case, it is his contention that, the statutory notice issued by him before filing the complaint was served on the accused at his address for which he had given his reply admitting the execution of the cheque towards outstanding liability. Relying on the reply notice, he did not deem it necessary to produce during his evidence, the ledger in which day-to-day transaction between the parties is entered. The complainant for the first time in his defence evidence has taken a "U" turn that, the reply notice/Ex. P46 is not issued by him and produced a copy of another reply notice marked as Ex. D11. Hence, it has become expedient for him to produce the documents maintained by him in connection with the business transaction with the accused to prove his bona fide claim.

8. In reply, Sri. Jayaprakash Shetty, learned Counsel for the respondent submits that, the complainant during his evidence manipulated a fake document/Ex. P46 as reply notice issued on behalf of the accused to believe that the accused had admitted his liability about the amount mentioned in the disputed cheque/Ex. P46. During the cross-examination of PW-1, suggestions were put to him denying Ex. P47 and its contents. This Court cannot invoke its extraordinary jurisdiction under Section 482 of Cr.P.C. since his appeal is dismissed by the Appellate Court. Without producing his entire evidence at the first instance, he has filed the application in a belated stage. It is for the learned Trial Judge to assess the veracity of the documents marked as Ex. P6 and Ex. D14 during final adjudication and the petition lacks merits.

9. The order passed on an application under Section 311 of Cr.P.C. being interlocutory in nature, revision on such order is barred under Section 397(2) of Cr.P.C. As such it is not an appealable order also. Consistently the Courts have

held that, the inherent power cannot be involved if there is specific provision in the Code of Criminal Procedure or any other enactment for redressal of the grievance of the aggrieved party. When no forum is provided against the order under Section 311 of Cr.P.C. and the order in question being interlocutory in nature since not amenable for revisional proceedings, Section 482 of Cr.P.C. is the only remedy to the aggrieved complainant.

10. Coming to the merits of the case, admittedly, Ex. D11, the alleged reply notice issued by the accused was not confronted to the complainant/PW-1 while he was in the witness box. No defence was set up from the inception that, the accused had issued a reply notice denying the cheques in question and his liability. The Trial Court could not have expected the petitioner/complainant to refer to the documents maintained by him during the transaction with the accused since he had proceeded relying on Ex. P46 under which the accused is alleged to have admitted his liability and also the issue of cheques.

11. So far as the observation of the Trial Court to the extent of observing that "the complainant has not even disclosed anything about these documents in his complaint or in his affidavit filed in lieu of oral evidence" is perverse.

12. The other observation of the Court while rejecting the application was, the complainant has not chosen to produce any document before the Court, which is intending to be marked. In his application, he had not disclosed the nature of the documents which he intended to produce. Though this part of the reasoning assigned by the learned Magistrate while dismissing the application cannot be found fault with, at the same time, it shall be noted that the learned Magistrate could have called upon the complainant to produce his documents before considering the application. Still the ends of justice would require that the complainant shall be afforded an opportunity to meet the defence document by which he is taken by surprise.

13. In that view of the matter, I am prompted to hold that the application requires reconsideration.

The petition is allowed. The order of the learned Magistrate at Annexure-A dated 19.4.2014 is hereby set aside. The petitioner is directed to produce additional documents on which he is placing reliance in proof of his case. On such production, the application shall be considered afresh and disposed of in accordance with law.