
(2009) 04 KAR CK 0091
In the Karnataka High Court
Case No : Criminal Petition No. 3986 of 2006

K.C. Ravindranath

APPELLANT

Vs

State of Karnataka, A. Kumaraswamy and N. Chalapathy

RESPONDENT

Date of Decision : 24-04-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 420, 468, 471

Citation : (2009) 04 KAR CK 0091

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : C.V. Nagesh, for the Appellant; B. Balakrishna, H.C.G.P. in Criminal Petition No. 3986/2006 and Srinivas, for B. and S. Assts. in Criminal Appeal No. 1709/2007, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramanna, J.—The petitioner in Crl.P. No. 3986/2006 has come up with this petition challenging the order dated 31-7-2003 passed in C.C. No. 12011/2003 taking cognizance and directing registration of a case against the petitioner for the offence punishable under Sections 420, 468 & 471 of IPC and to quash the entire proceedings initiated against him.

2. The appellant in Crl.A. No. 1709/2007 has sought to set aside the judgment dated 22-9-2007 passed by the XXXVI Addl. City Civil & Sessions Judge, Bangalore in Crl.A. No. 1238/2006 and confirm the order of conviction and sentence dated 30-6-2006 passed by the XXII ACMM, Bangalore in C.C. No. 34904/2002.

3. Since the petitioner in Crl.P. No. 3986/2006 and appellant in Crl.A. No. 1709/2007 are one and the same, so also the respondent and the subject matter involved therein is also connected to each other, they are taken up together.

4. The brief facts of the case of the appellant in Crl.A. No. 1709/2007 is that the respondent-1 is a partnership firm and respondents-2 & 3 are its partners and

that they have issued a cheque Ex.P-2 for a sum of Rs. 30,000/- for due discharge of their liability; when the said cheque was presented for encashment, the same returned unpaid with bank shara "account closed". Therefore, after complying with the mandatory provisions of the Act, he filed a private complaint against the respondents for the offence punishable u/s 138 of the Act. To prove his case, appellant - complainant examined himself as P.W. 1 and got marked Exs.P-1 to P-23. On the other hand, respondent-3 examined himself as D.W.3 and got marked Exs.D-1 to 7. The trial Court after considering the material evidence placed before it, convicted the respondents for the aforesaid offence and sentenced them to pay a fine of Rs. 50 lakhs, in default, to undergo S.I for 12 months. Being aggrieved by the said order of conviction and sentence, respondents preferred an appeal before the Court below which came to be allowed by setting aside the order of conviction and sentence passed by trial Court and consequently dismissed the complaint filed by the complainant-appellant herein. Hence the appeal.

5. The case of the respondents - accused is that the appellant had no capacity to lend the amount covered under the cheque Ex.P-2. It is the specific case of the accused that during the 1997 the accused No. 3 had borrowed loan of Rs. 2 lakhs from the appellant and the cheque in question was given as security which was signed blank undated at that time. It is his further case that later the said loan was repaid through cheque Ex.D-7 dated 5-8-1998, but inspite of the same appellant did not return the cheque in question, contending that the same has been lost in transit, however, on repeated request and demand, appellant had issued the letter Ex.D-3 in that respect, admitting the receipt of loan amount and had clearly stated that accused have no liability under the cheque Ex.P-2. But surprised to this, the accused received the demand notice from the appellant and only thereafter it came to know that the appellant had misused the said cheque which was given as security and got filled the amount as Rs. 30,000/- and presented the cheque which came to be dishonoured. Therefore, immediately he filed a police complaint against the appellant for the offence punishable u/s 420, 468 & 471 IPC. On receiving the complaint, the trial Court referred the matter for police investigation u/s 156(3) Cr.P.C. After investigation, the police filed charge sheet against the appellant for the aforesaid offences. Therefore, the trial Court took cognizance of the said offences and ordered to register the case. Hence the appellant has come up with Crl.P. No. 3986/2006 praying to set aside the said order of taking cognizance and to quash the proceedings initiated against him.

6. In Crl.A. No. 1709/2007, the lower appellate Court reversed the judgment and order of conviction and sentence passed by the trial Court and dismissed the complaint filed by the complainant herein holding that the respondent-accused have rebutted the presumption available in favour of the appellant. Of course, it is a settled law that under the N.I. Act, there is a presumption available in favour of the holder of the cheque that the drawer of the said cheque issued the same towards discharge of legally recoverable debt or other liability and it was for the drawer of the cheque to show before Court that there was no such liability under

the said cheque. Thereafter the burden shifts to the holder of the cheque to prove its case. The burden on drawer of the cheque to rebut the presumption available in favour of the holder of the cheque is not heavy, it is sufficient if it is shown before Court that the case put forth by the complainant-holder of the cheque is incorrect and illegal. In the instant case, it is the case of the respondent-accused that respondent-3 had borrowed only Rs. 2 lakhs from the complainant and that the same was repaid, inspite of it, appellant misused the blank signed cheque which was given as security at the time of borrowing the amount. In support of their case, the accused got marked Ex.D-7 the cheque issued by respondent-3 to appellant for repaying the said loan amount. Of course, the said cheque Ex.P-7 is a bearer cheque. But, the respondent have proved before Court that the same has been encashed by the appellant himself and he has not disputed his signature found on the reverse side of the cheque. Thus, the respondents have prima-facie established before Court that they have repaid the loan amount covered under the cheque Ex.P-2. Furthermore, Ex.D-3 - letter issued by appellant in presence of witnesses admitting the receipt of said amount and stating therein that the respondents are not liable to pay any amount under the said cheque Ex.P-2 to him. Of course, this document has been seriously disputed by the appellant. However, the respondents have proved the signature of appellant found on the said letter - Ex. D-3. If really, the said letter has not been executed by the appellant, the appellant has not explained before Court under what circumstances the said letter came into existence. Of course, the witnesses referred in the said letter said to have signed on the said letter when it was blank, but the appellant has not examined them before the Court, Their contrary statement said to have been recorded before Lokayukta police cannot be accepted, since, because, earlier to the said statement recorded, the said witnesses have supported the case of the respondents in the statement recorded by the police in a criminal case filed by respondent-3 against the appellant. The entire case of the appellant is full of contradictions. On the one hand, he contend that he had the last money transaction with the respondent in the month of February, 2002 but on the other hand he claimed that respondents borrowed the amount in the month of March, 2002. Further, he has stated that respondents borrowed the loan amount for submitting a tender but during his examination he stated that respondents were in need of money for constructing a building, whereas, in the complaint filed before Court, he has not stated for what purpose the said amount had been borrowed by the respondents. Further, appellant failed to prove before Court and even failed to explain from where he mobilised the said huge amount of Rs. 30 lakhs. The Court below has rightly disbelieved the capacity of appellant to lend huge sum of Rs. 30 lakhs, that too, without any interest. The appellant pleads his ignorance for much of the questions put to him in the cross examination. Therefore, the defence of the accused that respondent No. 3 borrowed the loan amount during the year 1997 and repaid the same through Ex.D-7 dated 5-8-1998 and that due to heavy loss in their business, they closed their bank account in 2001 supports the case of the respondents that they might not have issued the cheque Ex.P-2 in the year 2002

as claimed by the appellant and that the bank account of respondents has been closed in the year 2001 itself. There is no other material placed on record by the appellant to substantiate his case in full, since the respondents have rebutted the presumption available under the Act in favour of appellant, the appellant is not entitled to any presumption to hold that the cheque Ex.P-2 is issued towards repayment of loan amount. Therefore, the Court below rightly disbelieved the case of appellant and consequently dismissed his complaint by setting aside the order of conviction and sentence passed by the trial Court. The lower appellate Court had answered each and every point involved in the case and has written a lengthy judgment covering all aspects of the matter which is proper and correct and does not require any interference.

7. As for as Crl.P. No. 3986/2006 is concerned, immediately after receipt of demand notice in the above discussed case, the respondent herein filed a private complaint against the petitioner herein for the offences punishable u/s 420, 468 & 471 IPC which was referred to police investigation by the Magistrate and after investigation charge sheet came to be filed by the police against the petitioner for the aforesaid offences. Hence, the learned Magistrate after considering the materials placed on record took cognizance of the case and ordered to register the same. As such, I do not find any illegality or incorrectness in the same. Of course, it is contended that statement of witnesses recorded by the police in the said case are incorrect and that the police have not followed the procedure in investigating the case and that the witnesses have stated before Lokayuktha in a separate case contrary to what they have stated before the police in the above case. Therefore, it is contended that since there is procedural irregularities in the investigation done by the 1.0 in the above case and that witnesses have not supported the case of complainant - respondent in the connected case before the Lokayukta, he prayed for quashing the proceedings initiated against him. However, prima-facie the material placed on record by the police in the above case discloses that there is a triable case against the petitioner. The irregularity in the investigation or any contrary evidence of witnesses recorded in some other case is not a ground to quash proceedings in this case against the petitioner. The petitioner can very well avail those grounds during the trial to contradict the prosecution witnesses and to prove his defence. As such, this petition fails and is liable to be dismissed.

8. Accordingly, both the petition and the appeal are dismissed as devoid of merits.