(2010) 10 KAR CK 0028

In the Karnataka High Court

Case No : Criminal Appeal No. 386 of 2010

K.T. Sathish Gowda APPELLANT

Vs

Nagaraja Gowda RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Citation : (2010) 10 KAR CK 0028

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : P. Karunakar, for the Appellant; H.B. Narayana and H.M. Manjunatha Associates, for the Respondent

Final Decision : Allowed

Judgement

Huluvadi G. Ramesh, J.—This appeal is filed against the order of acquittal passed by the JMFC, N.R. Pura, in C.C. No. 370/2007 in acquitting the accused and dismissing the complaint.

2. According to the Appellant-complainant, the accused had borrowed a sum of Rs. 1,30,000/- from the complainant towards his necessities and in this regard, had issued a cheque for the said amount drawn on Canara Bank, which came to be dishonoured when presented for encashment during June 2007. Accordingly, after issuance legal notice for non-payment, the complaint came to be filed. The trial Court, after enquiry, has held that there is a contradiction in the version of the complainant and he is not definite about the terms and conditions of the transaction. He has not produced his source of income to lend such a huge amount and accordingly, has dismissed the complaint.

3. Heard.

4. According to the learned Counsel for the Respondent-accused, the accused had borrowed only Rs. 15,000/- and in this regard had issued the cheque towards security and not for Rs. 1,50,000/- and the said cheque has been misused. Further, according to him, the accused has already repaid the amount

of Rs. 15,000/- during 2005 itself.

5. The learned Counsel appearing for the complainant has submitted that, there is a legally enforceable debt and the presumption is in favour of the complainant. The trial Court has shifted the burden on the complainant instead of throwing the burden on the accused.

6. As per the contention of the accused, on such payment being made by him, when he has insisted upon the complainant to return the cheque, the complainant did not return the cheque. In the course of discussion, the trial Court has noted that the complainant is having a daily turn over of Rs. 7,000/- to 8.000/- and that he is running a bakery business. Stating that he has not produced the source of income to lend such a huge amount, it has dismissed the complaint. However, the initial presumption is always in favour of the complainant and it is for the accused to rebut the presumption with cogent evidence.

7. In the case on hand, it is seen that, the accused has replied to the legal notice issued. But the contention taken by him is that he had issued personal cheque to the complainant after borrowing a sum of Rs. l5,000/-. However, he has not intimated his banker to stop payment. There appears to be some transaction between the complainant and the accused.

8. Having regard to the fact that the transaction is of the year 2005, the accused is directed to pay an amount of Rs. 30,000/-, within three months, in default, he shall undergo simple imprisonment for a period of two months. Out of the said amount, Rs. 28,000/- shall be paid to the complainant and Rs. 2,000/- shall be forfeited to the State. Accordingly, appeal is allowed in part.

Consequently, Misc. Crl. 1777/2010 filed for Spl. Leave is also disposed of.