

(2010) 12 KAR CK 0095
In the Karnataka High Court
Case No : Criminal Appeal No. 1790 of 2007

L.D. Sathyanarayana

APPELLANT

Vs

Shivakuamr. C.M.

RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2010) 12 KAR CK 0095

Hon'ble Judges : Hluvadi. G. Ramesh, J

Bench : Single Bench

Advocate : S. Vishwajith Shetty and N.K. Shetty, for the Appellant; M.A. Vijay, for the Respondent

Final Decision : Allowed

Judgement

Hluvadi G. Ramesh, J.—This appeal is by the complainant assailing the order of the learned JMFC II Court, Davanagere, in C.C. No. 2372/2006 dated 04.08.2007.

2. According to the complainant, accused had borrowed a sum of Rs. 1,00,000/- from the complainant to meet out his family necessities on 1.5.2004 and on repeated requests, towards repayment of the said amount, had issued a cheque dated 25.4.2006 drawn on Shiva Sahakari Bank Ltd., Davanagere, which on presentation for encashment, came to be dishonoured for insufficient funds. Accordingly, after issuance of legal notice, since the accused has not replied nor paid the amount, the complaint was filed. The trial Court, after enquiry, based on the shara written on Ex.P7, the notice sent to the accused by registered post that "door number is not properly mentioned and party is absent for 7 days hence returned to sender", and also on the admission made by complainant in the cross-examination that "it might be true that Ex.P7 was returned as door number was incorrect", holding that legal notice has not been properly served to maintain the complaint u/s 138 of the Negotiable Instruments Act, has dismissed the complaint, as against which, this appeal is filed.

3. Heard.

4. According to the Appellant's Counsel, to the same address to which the complainant had sent the legal notice, the Court summons was served on the accused and he has represented. As per Section 27 of the General Clauses Act, when notice issued has been returned to the sender even due to the absence of the accused, it is deemed that notice has been served and the finding of the trial Court that there is no deemed service of notice is improper.

5. According to the Counsel for the accused, when the notice has been returned for not mentioning the correct address and when the same has been admitted by the complainant that door number has not been properly mentioned, there is no question of service of notice. Hence, the trial Court has rightly dismissed the complaint.

6. The admission of PW.1 to the suggestion that, might be the letter was returned back due to non-mentioning of correct door number, itself does not necessarily mean that the complainant has admitted the fact of non-service of notice. The trial court ought to have taken note of the appearance of the accused before the court on issuance of summons to the same address and as per Section 27 of the General Clauses Act, when it is written on the back side of the cover that the accused was absent, necessarily there is a presumption available to deem that the notice has been served. Hence, the finding of the trial Court regarding service of notice is erroneous and, it is held that notice has been served on the accused.

7. Accordingly, appeal is allowed and the matter is remitted to the trial Court. It is for the trial Court to proceed further in accordance with law and to dispose of the matter after affording opportunity to both the parties to lead additional evidence, if need be. Office to send back the records.

Parties are directed to appear before the trial Court on 16.12.2010.