(2013) 12 KAR CK 0485

In the Karnataka High Court

Case No : Criminal Appeal 3514 of 2010

M. Pundalik Rao APPELLANT

Vs

Vijaykumar RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 139

Citation : (2013) 12 KAR CK 0485

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : Hema L.K, for the Appellant; Vilas Rao M. More, for the Respondent

Final Decision : Allowed

Judgement

Huluvadi G. Ramesh, J.—Appeal is by the complainant challenging the order of acquittal passed by the JMFC (II), Bidar in CC 412/2003 on 3.12.2009. It is stated, complainant advanced a loan of Rs. 92,000/- as hand loan and towards repayment, a cheque was issued. On presentation, the same was dishonored. The cheque dated 22.7.1997 drawn on Canara Bank, Bidar Branch issued by the accused was returned with an endorsement ''refer to drawer''. After service of legal notice, when accused failed to make payment, complainant and his brother in law approached the accused for repayment and when they failed in their attempt, complaint was filed. The trial court after recording the sworn statement, after hearing the complainant, registered a case under S. 138 of the Negotiable Instruments Act. After hearing, the accused was acquitted. Aggrieved, complainant is before the Court.

2. Heard the counsel representing the parties.

3. The trial court dismissed the complaint on the ground that complainant has no documentary evidence to prove advancing amount and also financial capacity to lend such amount. What is admitted is the dishonour of the cheque, might be because of insufficient funds. However, the position is well settled in the case of

M/s. Electronics Trade and Technology Development Corpn. Ltd., Secunderabad Vs. M/s. Indian Technologists and Engineers (Electronics) Pvt. Ltd. and another, wherein the apex court has observed that when the drawer of cheque is having insufficient funds to his credit cannot escape liability under S. 138 of the Negotiable Instruments Act.

4. It appears the entire approach of the trial court is without proper discussion. It has proceeded to acquit the accused on the ground that no case is made out. Although service of notice on the accused is admitted, it is noted that the service of notice is on the staff of the accused company. It is to be noted, once cheque is issued, on such dishonour, presumption under S. 139 of the Act is in favour of the complainant regarding cheque being issued towards legally enforceable debt. Might be no other document would be available with the complainant except the cheque. What is noted as per the submission of the appellant''s counsel is, though the accused has stated that the complainant has not advanced any money and there is no transaction between them, but during cross-examination he has admitted that he was supplying material to the complainant. Such being the case, there appears to be some transaction between the complainant and the accused in respect of which, might be, the accused would have issued a cheque to the complainant.

5. In that view of the. matter, there is non-consideration of the case of the complainant/appellant that the cheque was issued by the accused in favour of the complainant towards legally enforceable debt - whether it was paid through cheque or in cash and, even the accused was unable to dispute the fact of issuance of cheque. The stand taken by the accused is, one of the cheques was taken out by an employee and given to the complainant. This version/defense of the accused is not convincing.

6. Accordingly, the impugned order is set aside. Matter is remitted to the trial court for disposal of the same, according to law. All contentions are left open to be urged. It is even permissible for the parties to go for a compromise during pendency of the matter before the trial court. Send back the records. Appeal is allowed.