
(2014) 04 KAR CK 0119
In the Karnataka High Court
Case No : Criminal Appeal No. 880/2008

M/s. Shriram Investments Ltd.

APPELLANT

Vs

Mr. K. Mohammed

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

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

Citation : (2014) 04 KAR CK 0119

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : M. Ashok Kumar, Advocate for the Appellant; Parineetha S. Channal, Advocate for the Respondent

Final Decision : Dismissed

Judgement

N. Ananda, J.—The learned Magistrate convicted the respondent (accused) of an offence punishable u/s 138 of the Negotiable Instruments Act. Therefore, he was before the I-appellate court in Crl. A 219/2006. The learned judge of the I-appellate court on reappreciation of evidence has reversed the judgment of conviction and acquitted the accused. Therefore, the complainant is before this court.

2. I have heard, Sri. M. Ashok Kumar, learned counsel for complainant and Smt. Parineetha S. Channal, learned counsel for accused.

3. It is established from evidence on record that complainant is a Finance Corporation engaged in advancing finance for purchase of vehicles. The complainant had financed a sum of Rs. 1,90,000/- to the accused on 03.11.2001 to purchase Ashok Leyland Tempo bearing registration No. KA-13/3622. The complainant has added a sum of Rs. 23,400/- towards insurance premium and a sum of Rs. 96,900/- towards finance charges. Thus, as on 03.11.2001, the accused had to pay a sum of Rs. 3,10,300/- to the complainant and the same was payable in 36 monthly installments in terms of Schedule-II of Hire Purchase

Agreement dated 03.11.2001 entered into between the parties.

4. It is the case of complainant that accused was due in a sum of Rs. 1,10,000/- as on 31.08.2002 and in order to discharge the said liability, he had issued a cheque for a sum of Rs. 1,10,000/- to the complainant, which on presentation was dishonored.

5. The learned trial judge accepting the evidence of complainant and raising the presumption available u/s 139 of the Negotiable Instruments Act, held the accused guilty of an offence punishable u/s 138 of the Negotiable Instruments Act.

6. The learned judge of the I-appellate court on reappreciation of evidence has held that, complainant has failed to prove that accused was due in a sum of Rs. 1,10,000/- to the complainant as on 31.08.2002 and the cheque was issued to discharge the legally recoverable debt.

7. On hearing learned counsel for parties and after going through the documents, which have not been disputed by either parties, I find that accused had entered into Hire Purchase agreement in relation to Ashok Leyland Tempo bearing registration No. KA-13/3622 He was due in a sum of Rs. 3,10,300/- to the complainant as on 03.11.2001 and he had agreed to repay the same in 36 monthly installments as detailed in Schedule-II of Hire Purchase agreement. I find that as on 31.08.2002, the accused was expected to repay the money in 36 monthly installments.

8. The complainant has admitted that the vehicle was repossessed and sold on 31.07.2002. The complainant has not produced the account extract to show number of installments paid by the accused and also amount realized by sale of vehicle repossessed from the accused.

In the circumstances, it is difficult to accept the case of complainant that accused was due in a sum of Rs. 1,10,000/- as on 31.08.2002 and in order to discharge the said liability accused had issued a cheque for a sum of Rs. 1,10,000/-. On the other hand, the case of accused that at the inception of loan transaction, the complainant had obtained blank cheques from the accused and misused one of the cheques to initiate the present complaint appears probable.

9. The law is fairly well settled, in order to hold the accused guilty of an offence punishable u/s 138 of the Negotiable Instruments Act, the complainant has to prove beyond reasonable doubt that accused had issued the dishonored cheque to discharge legally recoverable debt. The existence of legally recoverable debt is the primary ingredient of an offence punishable u/s 138 of the Negotiable Instruments Act. The complainant has failed to prove the existence of legally recoverable debt. Therefore, presumption u/s 139 of the Negotiable Instruments Act cannot be raised in favour of the complainant.

10. The learned judge of the I appellate court on proper appreciation of evidence has reversed the judgment of conviction and acquitted the accused. There are no

reasons to interfere with the impugned judgment. The appeal is dismissed.