(1999) 09 KAR CK 0020

In the Karnataka High Court

Case No : Criminal Appeal No. 866 of 1998

M/s. S.R. Nagaraj and Company, Arasikere Town, Hassan District — APPELLANT

Vs

M/s. Sri Ganesh Oil Mill, Haveri, Dharwad District — RESPONDENT

Date of Decision : 10-09-1999

Acts Referred:

Constitution of India, 1950 — Article 254 (1)
Criminal Procedure Code, 1973 (CrPC) — Section 251
Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 84 (4)
Negotiable Instruments Act, 1881 (NI) — Section 138, 138 (b)

Citation : (2000) 1 CivCC 147 : (1999) ILR (Kar) 4020 : (1999) 6 KarLJ 209 : (1999) 4 RCR(Criminal) 646

Hon'ble Judges : K.R. Prasada Rao, J

Bench : Single Bench

Advocate : M/s. M.V. Kini and Company, for the Appellant;

Judgement

1. This appeal is filed by the complainant in CC. No. 354 of 1995 on the file of the Prl. Civil Judge (Jr. Dv.) and JMFC, Arasikere, against the order of acquittal of the respondent accused in respect of the offence u/s 138 of the Negotiable Instruments Act (for short, the ''Act'').

2. The appellant has filed a complaint against the respondent in the Trial Court for the offence u/s 138 of the Act, alleging that its firm was dealing in business of sunflower seeds in RMC Yard, Arasikere and the respondent has purchased the sunflower seeds from the appellant''s firm and towards payment of the amount of the bill respondent has issued two cheques, one bearing No. 573356 dated 1-4-1995 for Rs. 1,50,000/- and another Cheque No. 573355 dated 6-4-1995 for Rs. 1 lakh in favour of the appellant, drawn on Vijaya Bank, Haveri Branch. When the appellant presented the above said two cheques for encashment through its banker Syndicate Bank, Arasikere Branch, those two cheques were returned dishonoured with an endorsement as ''funds insufficient''. Thereafter, appellant got issued notice to the respondent intimating him about the dishonour of the

said two cheques and demanding him to pay the amount of those two cheques within 15 days from the date of receipt of the said notice, failing which the accused would be proceeded against for the offence u/s 138 of the Act. Since the respondent has not complied with the demand made in the said notice and has not even replied to the said notice, the appellant filed the complaint in the Trial Court. The Trial Court has taken cognizance of the offence in the complaint of the appellant, recorded the sworn statement of the appellant and thereafter, secured the presence of the respondent-accused on issuing summons. The accused was examined u/s 251 of the Cr. P.C. by explaining the substance of the accusation against him. Accused pleaded not guilty and claimed to be tried. Thereafter, the Trial Court recorded the evidence adduced by the appellant and his two other witnesses and marked 19 documents produced in support of the case. Thereafter, the statement of the respondent-accused was also recorded. On appreciation of the evidence adduced by both parties, the Trial Court came to the conclusion that, in respect of the amount due for the purchase of sunflower seeds from the appellant, the respondent accused issued two cheques, one for Rs. 1,50,000/- and another cheque for Rs. 1,00,000 dated 1-4-1995 and 6-4-1995 respectively and that the said two cheques were dishonoured for want of sufficient funds when they were presented for collection by the bankers of the complainant and that the accused failed to pay the said amount within 15 days from the date of receipt of the said notice, on intimation of the dishonour of the cheques issued to him. The Trial Court also found that the notice issued by the complainant is in order and there is compliance with the requirement of service of the notice as required under the provisions of Section 138(b) and (c) of the Act. However, the Trial Court came to the conclusion that the complaint filed is not maintainable since the complainant has not taken permission from the Market Committee, APMC Yard as required under the provisions of Section 84(4) of the Karnataka APM (Regulation) Act, 1966, before filing the complaint. The Trial Court therefore acquitted the accused on the said ground in respect of the offence u/s 138 of the Act. The complainant therefore filed the present appeal.

3. I have heard the arguments advanced by the learned Counsel for the appellant-complainant. The accused engaged a Counsel and when the matter came up for the final hearing, his Counsel filed a memo of retirement. Thereafter, the accused appeared in person before this Court on 9-8-1999 and requested for time to engage another Counsel. Accordingly, time was granted to him till 20-8-1999. Again on 20-8-1999 since the accused remained absent, the case was adjourned finally to 3-9-1999. On 3-9-1999 also the respondent-accused remained absent and nobody filed vakalath on his behalf. On that day, arguments of the learned Counsel for the appellant were heard and the matter was finally posted to today for the reply arguments of the respondent-accused. Even today the accused remained absent and remained unrepresented. Learned Counsel for the appellant concluded his arguments.

4. Learned Counsel for the appellant submitted that the Trial Court having found that the cheques issued by the respondent towards the amount due by him for

the purchase of sunflower seeds from the appellant-firm were dishonoured for want of sufficient funds and that the accused was given opportunity to pay the amount by issuing a valid notice intending that the accused should pay the amount of the cheques issued within 15 days from the date of receipt of the intimation of the dishonour of the cheques from the bank and that the accused has not complied with the said demand, has erroneously acquitted the accused holding that the complaint is not maintainable for want of sanction from the Market Committee under the provisions of Section 84(4) of the Karnataka APM (Regulation) Act, 1966. It is submitted by him that the provisions of Section 84(4) of the said Act are not attracted to the present case since the said provision applies only to the disputed claims of civil nature, but not in respect of the criminal prosecutions under the Act. It is further pointed out by him that, since the Act is a Central enactment passed by the Parliament relating to a subject under Entry No. 46 of the Union List, the said legislation passed by the Parliament has overriding effect over the State laws as is clarified under Article 254(1) of the Constitution of India. He has also drawn my attention to the Rule 55 of the Karnataka APM (Regulation) Rules, 1968 which mandates that the settlement of disputes of the civil nature are to be referred to a panel of committee of arbitrators appointed in a manner mentioned under the provisions and contended that it is a statutory provision made for arbitration under the Act in respect of civil disputes, which is not applicable in respect of the criminal prosecutions under the Act. Before considering the merits of these arguments, I shall briefly refer to the evidence adduced by the complainant and the accused to find out whether it is clearly established by the complainant that two cheques were issued by the accused for discharge of the amount due by him under the sale transaction. The complainant has given evidence in the Trial Court clearly stating that the accused had purchased sunflower seeds from his firm and for payment of the bill amount he issued one cheque for Rs. 1,50,000/- dated 1-4-1995 and another cheque for Rs. one lakh dated 6-4-1995 drawn on Vijaya Bank, Haveri Branch, as the proprietor of M/s. Ganesh Oil Mills. He further stated that the said cheques marked as Exs. P. 1 and P. 2 were sent for encashment by his bankers Syndicate Bank, Arasikere Branch and he received an intimation from the bank that the cheques were returned dishonoured for "insufficiency of funds". He received the information from the bank on 24-5-1995. According to him, he has immediately intimated the said fact to the accused through the telephone. Since the accused did not make any payment, he issued a legal notice by registered post and the said notice has been returned as ''not claimed'' which is marked as Ex. P. 5. He produced the postal cover Ex. P. 7 for having sent the said notice by registered post. It is also in his evidence that he sent a copy of that notice under certificate of posting as per Ex. P. 6. It is also pointed out by the complainant that postal authorities made an endorsement on the cover of the notice which is marked as Ex. P. 9. He also produced a letter sent by the accused as per Ex. P. 10 and the cover in which the letter was sent which is marked as Ex. P. 11. By the said letter, the accused intimated the complainant that he could not arrange for the funds for payment of the cheque amounts and requested him not to present the cheques and intimated him that he will be meeting him after 3 days i.e. on 15-4-1995 or 16-4-1995. The complainant has also examined the Manager of Vijaya Bank as P.W. 2 who produced the certified copy of the cheque book register Ex. P. 16 and copy of the register pertaining to the return of the cheques without encashment which is marked as Ex. P. 17 and current account ledger copy of the accused marked as Ex. P. 18. The evidence of this witness also discloses that on 18-4-1995 the date on which the cheques were presented for collection, only an amount of Rs. 14,021.35 was standing to the credit of the accused in his account. It is also in his evidence that the two cheques were sent from Syndicate Bank, Arasikere Branch for collection and the same were returned with an endorsement as ''insufficient funds'' with memo Ex. P. 2. Thus, it is clear from the above documents produced by the appellant that the two cheques were dishonoured for want of sufficient funds in the account of the accused. Complainant has also examined the manager of Syndicate Bank P.W. 3 to prove that he presented the said cheques for collection through the said bank. This witness deposed that the complainant presented the said cheques for collection in their bank and they in turn sent them to Vijaya Bank, Haven Branch for collection and that the said cheques were returned with an endorsement as ''insufficient funds''. It is further found that the complainant has issued legal notice on 29-4-1995 by registered post as well as under certificate of posting, as is clear from the postal cover Ex. P. 5 and postal cover Ex. P. 6. On the back of the postal cover there is an endorsement that the notice was tendered on 2-5-1995, but the accused has not claimed the said postal cover and the said postal cover was returned with a postal seat showing the date as 15-5-1995. Thereafter, the complainant filed the complaint in the Trial Court on 20-5-1995 within 15 days from the date of return of the said postal cover. Thus, it is found from the above evidence adduced by the complainant that, he issued a valid notice to the accused within 15 days from the date on which he received the intimation from the bank relating to the dishonour of the cheques, giving 15 days time to the accused to pay the cheque amounts and filed the complaint within 15 days after postal cover was returned with an endorsement ''intimation served'' on the accused. I therefore, agree with the finding recorded by the Trial Court that there is valid service of notice on the accused. It is further found that the complainant has also sent notice under certificate of posting which was received by the accused. Thus, it is clearly established by the complainant that the cheques issued by the accused for the payment of the bill amount pertaining to the purchase of sunflower seeds, were returned dishonoured for want of sufficient funds. So, the Trial Court was justified in holding that the accused is guilty of the offences punishable u/s 138 of the Act. However, the Trial Court dismissed the complaint on the ground that the complaint is not maintainable for want of sanction of the Market Committee to prosecute the accused as required under the provisions of Section 84(4) of the Karnataka APM (Regulation) Act, 1966. I shall now consider the correctness of the said finding recorded by the Trial Court.

5. On a perusal of Section 84(1) of the Karnataka APM (Regulation) Act, 1966, it is found that the said provision is introduced "for the purpose of settling disputes between producers, buyers and sellers, or their agents including any disputes regarding the quality or weight of, or payment for, any agricultural produce, or any matter in relation to the regulation of marketing, of agricultural produce in the market area. The Market Committee of that area shall appoint a panel of arbitrators periodically consisting of agriculturists, traders and commission agents and constitute a Disputes Committee from among its members in such manner as may be prescribed".

Section 84(4) of the Karnataka APM (Regulation) Act, 1966 reads as under.--

"Notwithstanding anything contained in any law, no suit or other legal proceeding shall be entertained by any Court in respect of disputes referred to in sub-section (1), without the previous sanction of the Market Committee".

6. Thus, it is seen from the above provision that it is applicable only in respect of the disputes between buyers and sellers regarding payment for purchase of any agricultural produce in the APMC Yard. In the instant case, there is no dispute between the complainant and the accused relating to the amount payable in respect of the sunflower seeds purchased by the accused from the shop of the complainant situated in APMC Yard. In fact, the accused admitted that he purchased the agricultural seeds of the value of Rs. 2,50,000/- and instead of paying cash, he issued two cheques Exs. P. 1 and P. 2 for payment of the said bill amount. It is further found that the said cheques issued by the accused were dishonoured for want of sufficient funds and there is no dispute in relation to the correctness of the amount due by him in respect of the said sale transaction. Thus, there is no dispute which is to be settled by statutory panel of arbitrators provided u/s 84 read with rule 55 of the Karnataka APM (Regulation) Act, 1966 and its rules. Apart from this fact, it is also clear from the above provisions that the said disputes to be settled are only of civil nature and the suits or other proceedings for recovery of the amount due shall not be filed without obtaining sanction from the Market Committee. There is nothing in the said provision to indicate that in respect of the criminal prosecution under the provisions of the Act for dishonour of the cheques issued by the purchaser to the seller of agricultural produce, any sanction is to be obtained from the said Market Committee. As rightly pointed out by the learned Counsel for the complainant, Negotiable Instruments Act being a Central enactment passed by the Parliament relating to a subject at Cadre No. 46 of the Union List, the provisions of the said enactment have overriding effect over the State law as is made clear in Article 254(1) of the Constitution of India. So, the provisions of Section 84(4) of the Karnataka APM (Regulation) Act, 1966 are not applicable in respect of the complaint filed u/s 138 of the Act.

7. So, in my view, the Trial Court was not correct in holding that the previous sanction of the Market Committee is essential u/s 84(4) of the Karnataka APM (Regulation) Act, 1966 for filing the present complaint and that the complaint is

not maintainable in the absence of any such previous sanction.

8. I, therefore find that the impugned order of acquittal passed by the Trial Court on the ground that the complaint is not maintainable, is liable to be set aside.

9. In the result, this appeal is allowed setting aside the judgment of the Trial Court in CC. No. 354 of 1995 and the accused is convicted for the offence u/s 138 of the Negotiable Instruments Act and is sentenced to undergo S.I. for a period of one year and to pay a fine of Rs. 3,75,000/- in default to undergo S.I. for another one year. Out of the above said fine amount imposed, the complainant shall be paid by way of compensation a sum of Rs. 2,50,000/-.

