
(2010) 10 KAR CK 0131
In the Karnataka High Court
Case No : Criminal Appeal No. 1136 of 2004

M/s. United Distributors, Mangalore

APPELLANT

Vs

Smt. Geetha K. Rai

RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:

Citation : (2011) 3 KCCR 1825

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : S. Vishwanath Shetty, for the Appellant; Sandesh Shetty, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J

1. This appeal is filed by the complainant by challenging the order of acquittal passed in C.C. No.89/2002 dated 3/6/ 2004 by the learned JMFC (3rd Court), D.K., Mangalore.

2. According to the complainant, it is a registered partnership firm carrying on the business of dealership in consumers, durables and home appliances etc., in the name and style of "Best Electronics", at Mangalore. The complainant-firm is a dealer in Videocon made Washing Machine and Refrigerator; that the accused is carrying on her business as proprietrix of "Best Electronics" at Madikeri, Coorg District and that she has been purchasing Refrigerators and Washing Machines on credit basis by dealing with the complainant and was maintaining a running account relating to the transactions. During the course of business, complainant - firm had supplied Washing Machine and Refrigerators worth Rs. 11,17,695/- during the period December 1999 to November 2000. As far as the books of accounts maintained by the complainant, the accused was due in a sum of Rs. 2,58,763/- in December 2000; that in order to meet the liability, the accused had issued post-dated cheques drawn on Central Bank of India, Kodagarahalli Branch,

Kodagu, through the complainant as part payment of her outstanding amount, the details of which are as follows:-

Cheque No.

Date

Amount

002641

17-06-2000

30,370-00

002642

22-06-2000

33,000-00

002643

26-06-2000

14,280-00

002644

29-06-2000

10,380-00

That the accused had requested the complainant -- firm to postpone the presentation of the said cheques and ultimately on 12/12/2000, the complainant presented the said cheques but the same were not honoured and from the bankers namely, Karnataka Bank, Hampanakatte Branch, Mangalore, endorsement was issued stating that the cheques could not be honoured on account of "Insufficiency of Funds" and stop payment instruction issued to the bank on 13/12/2000, which was communicated to the complainant on 20/12/2000. Subsequently, a registered notice dated 31/12/2000 was got issued to the accused u/s 138 of the Negotiable Instruments Act (hereinafter, referred to as the "Act"), requesting the accused to make payment within 15 days from the date of receipt of the said notice, which was received by the accused on 2/1/2001, to which a false reply was given by the accused. Since the cheques issued by the accused were not honoured and reply sent by the accused were not tenable, the complainant filed the complaint u/s 138 of the Act r/w Section 200 of Cr.P.C. on 14/2/2001. Thereafter, on 2/1/2002, sworn statement of the complainant was recorded and Exs.C.1 to C.11 were marked, cognizance was taken and process was issued for appearance of the accused and on 11/2/2002 accused was present before the Court, he was released on bail on executing the bond and surety. Subsequently, plea was recorded for the offences punishable u/

s 138 of the Act and having recorded the said plea, of not guilty the accused claimed to be tried. Accordingly, the case was posted for evidence. In support of their case, the complainant examined P.W. 1 and got marked Exs.P.1 to P. 12 and the accused examined himself as D.W. I and got marked Exs. D.1 to D.4. The statement of the accused u/s 313 of the Cr.P.C. was recorded, and after hearing both sides, the Trial Court acquitted the accused for the offence punishable u/s 138 of the Act. Feeling aggrieved by the said order of acquittal, the complainant preferred this appeal.

3. I have heard the learned Counsel appearing for the complainant/ appellant and the learned Counsel appearing for the accused/respondent.

4. It is submitted on behalf of the appellant that the trial Court was not right in acquitting the accused. In the instant case, it was not in dispute that there was a business transaction between the parties: that a current account was maintained in respect of the purchase made by the accused from the complainant: that there was outstanding dues of Rs. 2,58,763/- at the relevant point of time, in respect of which, the accused had issued four post dated cheques and on the request of the accused for postponing the presentation of cheques, they were not presented and only on 13/12/2000 it was presented for realization but the same were dishonoured on account of there being insufficiency of funds and as stop payment instructions were issued by the accused on 4/9/2000. Hence, the accused had committed offence punishable u/s 138 of the Act, but the trial Court failed to appreciate this aspect of the matter and has erroneously acquitted her. He has also submitted that as on the date of presentation of the cheques, there was outstanding amount due from the accused and though the period between the handing over of the four cheques in question and the date of presentation, there were five cheques issued and some cash payment made and which cheques have been encashed, the same did not absolve the accused from making payment under the cheques in question and therefore, the judgment of the trial Court has to be reversed and accused has to be convicted for an offence punishable u/s 138 of the Act.

5. Per contra, learned Counsel appearing for the respondent submitted that although four post-dated cheques were issued by the accused, at the first instance, the total sum in respect of the said cheques was Rs. 88,030/-that even before the said cheques could be presented for encashment, five other cheques and cash payment for the very sum of Rs. 88,030/- were given by the accused and the said five cheques were encashed in the month of August 2000. Subsequently, on 4/9/2000, stop payment instructions were given and therefore, there was no necessity for the complainant to have presented the four cheques in question; that there has been no dishonor of the said cheques in the eye of law and hence, the trial Court was justified in acquitting the accused, which order does not call for any interference in this appeal. In support of his submission, he has relied on the decisions, which shall be adverted to subsequently.

6. Having heard the learned Counsel appearing on both sides and on perusal of

the material on record, the only point that arises for my consideration is as to whether the order of the trial Court calls for any interference in this appeal.

7. On a careful scrutiny of the material on record, it is not in dispute that in the first instance, four post-dated cheques, details of which are referred to above, for a sum of Rs. 88,030/-- were issued in the month of June 2000 by the accused in favour of the complainant. It is also not in dispute that subsequently, following cheques were issued by the accused in favour of the complainant, details of which are as under:

a)

Cheque No. 564865 dt. 10/8/2000 for

` 16,500/-

b)

Cheque No. 564866 dt. 14/8/2000 for (These two cheques were issued in place of Cheque No. 002462 of ` 33,000/-)

` 16,500/-

c)

Cheque No. 564867 dt. 18/8/2000 for

` 15,370/-

d)

Cheque No. 564868 dt. 21/8/2000 for (These two cheques were issued in place of Cheque No. 002461 of ` 30,370/-)

` 15,000/-

e)

Cheque No. 564869 dt. 24/8/2000 for (This cheque was issued in place of Cheque No. 002463 of ` 14,280/-)

` 14,280/-

f)

A sum of ` 10,380/- was paid in cash under C.R. No. 7385 dt. 22/6/2000 (This amount was paid in place of cheque No. 002644 of ` 10,380/-).

8. The four cheques in question were drawn on Central Bank of India, Kodagarahalli Branch, Kodagu Dist., while the aforesaid five cheques issued subsequently, were drawn on Vijaya Bank, Madikeri Branch. It is also not in dispute that the aforesaid five cheques were encashed by the complainant and a sum of Rs. 10,380A was received by the complainant prior to the stop-payment instructions issued by the accused to Central Bank of India on 4/9/2000. It is

subsequently on 13/12/2000 that the four cheques in question were presented before the bank and which were dishonoured. In the face of the aforesaid admitted and undisputed facts, the question that arises is as to whether the claim made by the complainant In respect of the dishonor of the four cheques amounting to Rs. 80,030/- was infact, satisfied by the respondent-accused and therefore, there was no cause of action which arose for the complainant or in other words that the direction for stop payment issued by the accused to the bank was not in violation of Section 138 of the Act. On a comparison, of the amounts due on cheques in question and the amount encashed in respect of five cheques issued by the accused in August 2000 as well as cash of Rs. 10,380/- paid by the accused to the complainant which was acknowledged it can be inferred that the total sum claimed in respect of the said four cheques has been satisfied by virtue of the encashment of the subsequent five cheques and receipt of cash of Rs. 10,380/-. However, it is the contention of the learned Counsel for the appellant that since there was a running account maintained between the parties, there was in any case outstanding dues of over X Two lakhs from the accused; that despite the encashment of the aforesaid five cheques in August 2000 and cash payment made, the amount still due under the cheques in question was a legal liability which the accused had to satisfy and hence, under those circumstances, the presentment of cheques was only in accordance with the outstanding legal liability of the accused and hence, the trial Court was not justified in acquitting the accused.

9. At the outset, it is necessary to note that though there was a running account maintained between the parties and the accused was due to the complainant for the purchase of various electrical appliances, what has to be considered for the purpose of determining the offence u/s 138 of the Act in the instant case is as to whether the claim made under four cheques in question had been satisfied by the accused so as to absolve her of any legal liability arising from the said four cheques in question. As already stated, it is not in dispute that the five cheques issued in the month of August 2000 and cash payment of Rs. 10,380/- made by the accused totally amounts to Rs. 88,030/- which was the amount due under the five cheques in questions. Though the accused may have been liable to the complainant in respect of the amount over and above what is due under four cheques in question, the scope of the complainant has to be restricted only to what is due under four cheques which are dishonoured and not any other legal liability. Infact, the debt or other liability referred to u/s 138 of the Act has to be read in the context of the amount that arises or is claimed in respect of the four cheques initially issued by the accused and which were returned by the bank dishonoured, either due to insufficiency of funds or due to stop payment instructions in which case, the offence could be said to have been committed. Therefore, the contention of the Counsel for the appellant that despite the payment of Rs. 88,030/- by the accused in the month of August 2000 through cheque and by cash, there was still outstanding liability on account of the business transactions in respect of which, the dishonor of the four cheques in

question has to be considered cannot be accepted.

10. Further Section 139 of the Act deals with presumption in favour of holder of cheques. However, the said presumption is a rebuttable presumption and contrary material can be produced by the accused in order to dislodge the case of the complainant. In the instant case, in the reply statement itself the accused has stated that the aforesaid five cheques were issued and cash payment of Rs. 10,380/- was made which was also acknowledged and that these five cheques drawn on ViJaya Bank were duly honoured and which amounted to Rs. 80,030/- which figure tallies with the amount mentioned in the four cheques in question and it is under these circumstances that stop payment instructions were issued on 4/9/ 2000 to Central Bank of India. Subsequently, in December 2000, cheques were presented just prior to their expiry date with intention to receive the double payment. The evidence let in by the accused in support of the said defence clearly rebuts the case of the complainant. Under the circumstances, the initially the presumption raised in favour of the complainant would no longer survive. Accordingly, the contention of the Counsel for the appellant that the outstanding dues of the accused were over and above what the sum total of the amount mentioned was the four cheques in question and therefore, the dishonor of the said four cheques would amount to an offence punishable u/s 138 of the Act, has to be rejected.

11. In this context, the decision of the Delhi High Court, reported in case of Nijjer Agro Foods Limited and Others Vs. Shri Nasib Chand and Another, has been relied upon by the learned Counsel for the respondent which is applicable to the facts of the present case. In the said case, two post-dated cheques were given in lieu of bank guarantee, subsequently, the said cheques were substituted by way of demand drafts as per agreement and under the said circumstances, it was held that the liability of the said cheques ceased to exist as once the payment against those cheques were made by way of demand drafts, the complainant was not entitled to present those cheques even if some amount or some balance amount was due from the accused. In the said decision, it is stated that Section 138 of the Act pertains to those cheques which are issued towards a legal liability. Once the said liability stands discharged the offence u/s 138 of the Negotiable instruments Act cannot be converted into civil suit for recovery. These are specific proceedings and confine only to cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part or other liability.

12. In the instant case, when the amount of Rs. 88,030/- arising from the four cheques in question had been paid by way of five other cheques drawn on another Bank, which were encashed in August 2000 and by further cash payment of Rs. 10,030/- there was no other liability which arose from the four cheques in question. Therefore, the trial Court was right in acquitting the accused of the offence punishable u/s 138 of the Act.

13. Also, in the case of Kumar Exports Vs. Sharma Carpets, in the context of presumption raised u/s 139 of the Act and its rebuttal, it is stated by the Apex Court to rebut a statutory presumption, an accused is not expected to prove his defence beyond reasonable doubt as is expected by the complainant in criminal trial. However, in the instant case, the presumption has been effectively rebutted by the accused and therefore, the offence u/s 138 of the Act is not made out.

14. Accordingly, the point for consideration is answered against the appellant and in favour of the respondent.

15. The appeal fails and is accordingly, dismissed.