(2011) 12 KAR CK 0153

In the Karnataka High Court

Case No : Criminal Appeal No. 2641 of 2006

N. Suryanarayan APPELLANT

Vs

Ayaz Ahmed Advocate RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 200

Citation : (2011) 12 KAR CK 0153

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : M.S. Varadarajan, for the Appellant; N. Savanur, for the Respondent

Final Decision : Dismissed

Judgement

Subhash B. Adi

1. Appeal by the complainant against the judgment of acquittal in C.C.No.5985/2004 dated 16th October 2006 on the file of XVIII Addl.C.M.M., Bangalore City.

2. Complainant had filed a private complaint u/s 200 of Cr.P.C. interalia alleging that, accused is known to him, he approached for hand-loan of Rs. 5,00,000/- to meet his urgent financial commitment. Complainant paid Rs. 5,00,000/- and in this regard, the accused issued a cheque No.702789 dated 23.9.2003 for a sum of Rs. 5.00.000/- drawn on Citi Bank, Bangalore, in favour of the complainant. On presentation, the said cheque returned from the banker of the complainant with an endorsement "insufficient fund". In this regard, complainant issued the notice by RPAD, it was duly served on the accused, accused failed to pay the amount. Hence, he filed the private complaint.

3. On summons, accused appeared before the trial court and pleaded not guilty, as such, the complainant in order to prove his case, got himself examined as PW-1. marked Exs.P1 to P8. On behalf of the accused, accused got himself examined as DW-1 and he also examined one witness as DW-2 and marked

Exs.D1 to D16.

4. Trial court on appreciation of the evidence held that the complainant has not proved that the accused had borrowed Rs. 5,00.000/- and has also not proved that there is legally recoverable debt and accordingly, acquitted the accused. It is against the said judgment, complainant is before this Court in appeal.

5. Heard Sri. M.S. Varadarajan. learned Counsel for the complainant and Sri. N. Savanur, learned Counsel for the accused.

6. Complainant in support of his case apart from his oral evidence, he has produced the cheque dated 23.9.2003 returned from the Bank along with endorsement. He had also produced legal notice - Ex.P3. acknowledgement - Ex.P6 and reply by the accused - Ex.P7. In the complaint as well as in his examination-in chief, complainant''s specific case is that, accused had borrowed a sum of Rs. 5.00.000/- from the complainant for which he had issued a cheque. In the cross-examination, complainant admits that, accused used to borrow money from him. He does not know as to why accused borrowed money from him. He also admits that, he has got a STD booth, his wife is a housewife and he gets income of Rs. 5,000/- per month from the STD booth. Further admits that, he had not taken any receipt, on demand promissory note from the accused or any document for having paid Rs. 5,00,000/-He further admits that, accused had only borrowed once from him and there is no other transaction with him or his wife and also admits that, there is no transaction with his wife.

7. Accused even before the complaint was filed, he had issued notices dated 17.9.2003 to the complainant, his wife and K. Srinivasa, who is stated to foe an Advocate of the complainant and his wife wherein, he has specifically alleged that, he had borrowed a sum of Rs. 75,000/- from the wife of the complainant and out of Rs. 75.000/-, he had paid Rs. 50,000/- and balance of Rs. 25.000/- still to be paid, and has also stated that, complainant came along with goondas and made galata in the office of the accused. In this regard, accused gave a cheque to K. Srinivasa, Advocate as a security with condition that the said cheque should be returned after accused pays the balance of amount. He called upon the complainant, his wife as well as K. Srinivasa, Advocate for return of the cheque. The said notice was served on the complainant, his wife and Advocate. However, only Advocate Srinivasa gave a reply as per Ex.D2 and in Ex.D2. he states as under:

...It may he true that the addressee Nos. 1 and 2 1 and 2 have paid an loan amount of Rs. 75.000/ to your client.

He has also stated that, addressee 1 and 2 i.e. complainant and his wife are his clients and he is required to render professional service for them. Complainant in the cross-examination admits receipt of notice at Ex.D1 and also admits that, in the said notice, accused had mentioned the balance amount as only Rs. 25,000/- and further admits that, he had not given any reply. The only reason assigned by the complainant is that, the accused had only admitted Rs. 25,000/- and not Rs.

5.00,000/-, hence, the complainant did not reply to the accused''s notice. Accused had also produced bank statement Ex.D4 wherein on 8.8.2003, Rs. 15.000/- has been withdrawn by Kalpana Reddy. Kalpana Reddy is none other than the wife of the complainant. Complainant has also produced Exs.D7 and D8 to show that, Kalpana Reddy has issued a receipt for having received Rs. 35.000/- and cheque for Rs. 15.000/-. These two documents are also not in dispute. These two documents prove that the accused had paid Rs. 50.000/-. Accused, even in his notice - Ex.D1 has stated that, he had paid Rs. 50.000/- and balance is only Rs. 25,000/-. To show that he had paid Rs. 50.000/-. Exs.D7. D8 and D4 are produced wherein it is shown that the amount is paid to wife of the complainant. Complainant does not say in the evidence that he has got separate transaction with the accused. In turn, he admits that, there is only one transaction with the accused and his wife has no transaction with the accused. K. Srinivasa, Advocate, who gave the reply as Ex.D2, also states that, loan may be only Rs. 75,000/-. K. Srinivasa is the Advocate for the complainant is also clear from the order sheet of the trial court dated 3.12.2005 wherein it shows that, K. Srinivasa has appeared for the complainant.

8. Admittedly, when Ex.D1 - notice was given by the accused specifically alleging that the transaction is only for Rs. 75.000/-, alleging that only Rs. 25,000/- is due and alleging that, the complainant''s Advocate K. Srinivasa had taken blank cheque from the accused he had sought for return of the same, Ex.D1 having been served on the complainant and his wife neither complainant disputes the contents of Ex.D1 nor has issued any reply alleging that the transaction is for Rs. 5,00.000/-In turn, if there is only one transaction between the complainant and the accused, payment of Rs. 50.000/- evidenced by Exs. D4. D7 and D8 and it is stated in the notice issued by the accused as per Ex.D1. It is also corroborated by Ex.D2. These documents clearly show that, there was one transaction between the complainant and the accused and in connection with the said transaction, payments are made. If the complainant admits that there is no other transaction, it is not known how cheque for Rs. 5.00.000/- was presented and what was the other transaction. There is no explanation by the complainant.

9. The other circumstances also show that the complainant is running a STD booth, his wife is housewife and his income is only Rs. 5,000/- per month. He has not shown as to what is the source of income to pay hand loan of Rs. 5,00,000/- to the accused. The accused has taken a specific defence that he had given the cheque to K. Srinivasa. who was an Advocate for the complainant. It is proved that. K. Srinivasa is an Advocate by Ex.D2 as well as the appearance of the very same advocate for the complainant before the trial court. The reply given by K. Srinivasa. Advocate also shows that the loan was only Rs. 75,000/-. This evidence proves that the complainant has failed to prove that the accused had borrowed Rs. 5.00,000/-.

10. In my opinion, the trial court on proper appreciation of the evidence has held that the complainant has not proved his case. In the circumstances, I find no

ground to interfere with the judgment, of acquittal.

Accordingly, the appeal fails and same is dismissed.

