

(2023) 10 KAR CK 0059

In the Karnataka High Court

Case No : Criminal Revision Petition No. 1072 Of 2016

P.P. Bijoy & Others

APPELLANT

Vs

M/S. Paper Packaging Pvt Ltd Kaidb Industrial Area Pb
No.124, Mandli Shivamogga-577202

RESPONDENT

Date of Decision : 26-10-2023

Acts Referred:

Code Of Civil Procedure Code, 1908 — Section 313
Negotiable Instruments Act, 1881 — Section 138

Citation : (2023) 10 KAR CK 0059

Hon'ble Judges : H.P. Sandesh, J

Bench : Single Bench

Advocate : Harish N.R, U. Lakshmeesh Rao

Final Decision : Dismissed

Judgement

H.P. Sandesh, J

1. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

2. The factual matrix of the case of the complainant/respondent before the Trial Court that the accused have purchased Kraft paper worth Rs.5,06,905/-from the complainant on credit basis vide bill Nos.4865, 02, 230, 408 and 548 through the authorized agent of the complainant M/s Vee Gee Enterprises and for discharge of the same, accused have issued a cheque bearing No.0980840 drawn on the Federal Bank Limited, Muthalamada Branch for Rs.4,90,000/- dated 29.02.2008 in favour of the complainant and when the said cheque was presented for encashment, the same was dishonoured with an endorsement 'Exceeds Arrangement' and hence, the complainant had issued a demand notice calling upon the accused to make payment. In spite of receipt of notice, the accused neither replied to the said notice nor repaid the cheque amount hence, filed the complaint.

3. On filing of the complaint, the Trial Court taken cognizance and allowed the parties to lead their evidence. In order to prove the case, the complainant company got examined one witness as PW1 and got marked the documents at Ex.P1 to P26. On the other hand, the statement of the accused was recorded under Section 313 of CPC and accused No.1 got examined himself as DW1 and got marked the documents at Ex.D1 to D5. The Trial Court taken note of the material on record and also considered the undisputed fact of purchase of the goods and also considered the evidence led by the accused that they have made payment of Rs.25,000/- each thrice subsequent to filing of the complaint and even prior to filing of the complaint, an amount of Rs.10,000/- was paid and the respondent also not disputed the said fact. The Trial Court having considered all these facts comes to the conclusion that the complainant was deprived of the money that was rightfully from six years four months and awarded an amount of Rs.6,30,000/-. Though the Trial Court made an observation that it is proper to impose penalty and to award compensation by awarding 9% interest on the cheque amount, in the operative portion, interest is not awarded. This order was challenged before the First Appellate Court in CrI.A. No.118/2014.

4. The First Appellate Court also on re-appreciation of material on record in paragraphs 13 and 14 taken note of the evidence of the complainant as well as DW1 and also considered the documents at 'P' and 'D' series and also taken note of the payment of Rs.10,000/- and Rs.25,000/- each thrice which comes to the total of Rs.85,000/- (10,000+75,000) and also considered the fact that the transaction is of the year 2006 and the reasoning given by the Trial Court for adjustment of the amount of Rs.85,000/- by considering the length of time that is depriving of the money from six years four months, comes to the conclusion that the Trial Court has not committed any error since there is no dispute of purchasing of the material from the complainant and dismissed the appeal. Being aggrieved by the order of both the Courts, the present revision petition is filed before this Court.

5. The learned counsel appearing for the petitioners would vehemently contend that the material on record is very clear that in the document at Ex.D1, they have mentioned that the cheque for Rs.5,00,000/- was issued but cheque was presented in terms of Ex.P2 for Rs.4,90,000/- and hence, it is clear that a blank cheque was misused and the said fact has not been considered by both the Courts and prays to allow this revision petition.

6. Having heard the arguments of the learned counsel appearing for the respective parties and also on perusal of the material on record it discloses that there is no dispute with regard to the purchasing of the goods and it is also not in dispute that prior to filing of complaint, an amount of Rs.10,000/- was paid by the accused and subsequent to filing of the complaint, an amount of Rs.25,000/- each was paid thrice. When such being the material on record, the contention of the counsel for the petitioners that the cheque which was issued is not towards legally recoverable debt cannot be accepted since the petitioners have not

disputed the fact that they have not purchased the material to the tune of Rs.5,06,905/- on credit basis and also not disputed the bill Nos.4865, 02, 230, 408 and 548. Their only contention that the cheque was blank and the same was misused. But the fact that the issuance of cheque is also not in dispute and the same is also admitted in the cross-examination of DW1. Hence, both the Courts have taken note of both oral and documentary evidence placed on record and comes to the conclusion that the transaction is of the year 2006 and the case was disposed of in the year 2014 and an amount of Rs.6,30,000/- was ordered to pay. When such being the case, I do not find any error committed by both the Courts in appreciating both oral and documentary evidence placed on record. No doubt, there is an observation in paragraph 28 of the judgment of the Trial Court that by considering the nature of the case and also the amount involved, it is proper to impose penalty and to award compensation by awarding 9% interest on the cheque amount but, in the operative portion, no such interest is imposed and only, an amount of Rs.6,30,000/- was awarded by the Trial Court by taking note of the fact that the transaction is of the year 2006 and the cheque is of the year 2008. Hence, I do not find any error committed by both the Courts in convicting the accused for the offence punishable under Section 138 of N.I. Act and sentenced to pay fine of Rs.6,30,000/- and in confirming the same and there is no illegality in the order of both the Courts. Thus, the petitioners have not made out any grounds to interfere with the order of the Trial Court as well as the First Appellate Court and hence, no merit in the revision petition to set aside the order of the Trial Court as well as the First Appellate Court and the same not suffers from any legality and its correctness.

7. In view of the discussions made above, I pass the following:

ORDER

The criminal revision petition is dismissed.