

(2006) 12 KAR CK 0063

In the Karnataka High Court

Case No : Criminal Appeal No. 1571 of 2001 (SJ)

Ranjitha Balasubramanian and Another

APPELLANT

Vs

Chandra Shekar Raju

RESPONDENT

Date of Decision : 12-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 255 (1), 313
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2008) 1 BC 65 : (2007) 2 KCCR 1103

Hon'ble Judges : V.G. Sabhahit, J

Bench : Single Bench

Advocate : B.K. Sampath Kumar and Associates, for the Appellant; Sriyuths C.V. Nagesh and M.N. Srikanth, for the Respondent

Final Decision : Allowed

Judgement

V.G. Sabhahit, J.—This appeal by the complainant is directed against the judgment of acquittal passed by the XIII Additional Sessions Judge, Mayo hall Unit, Bangalore, dated 28.9.2001, in Criminal Appeal No. 15074 of 2000, wherein the Appellate Court has set aside the judgment of conviction passed by the XIV Additional Chief Metropolitan Magistrate, Bangalore in C.C. No. 26641 of 1999, dated 21.6.2000, convicting the respondent-accused for the offence punishable u/s 138 of the Negotiable Instruments Act, 1881 hereinafter referred to as the "Act"). The essential facts of the case leading upto this appeal with reference to the rank, of the parties before the Trial Court are as follows:

2. The appellants herein filed a complaint against the accused 1 to 3 before the Trial Court alleging that the respondents have committed the offence punishable u/s 138 of the Act. It is the case of the complainants that the accused had received Rs. 6,00,000/- from them promising that a plot of land developed by the accused would be sold to them and, subsequently, the complainants came to know that the accused had not developed any land and, wherefore, they demanded the accused to return their money and in response to the same,

accused 2-respondent herein issued a cheque for Rs. 6,00,000/- on 25.11.1998 in favour of the complainants drawn on Canara Bank, Lalbagh West Gate Branch, Bangalore, and when the said cheque was presented for encashment, the same was dishonoured by the drawee Bank for "insufficient funds" on 2.12.1998. The accused were notified about the dishonour of the said cheque for insufficient funds and legal notice was issued and despite legal notice, the accused did not pay the amount of the cheque and, wherefore, complaint was filed by the power of attorney holder of the appellants herein.

2. After recording the sworn statement of the power of attorney holder, summons was issued to the accused and the accused pleaded not guilty and claimed to be tried and on behalf of the complainants, power of attorney holder was examined as P.W. 1 and he got marked the power of attorney-Ex. P. 1, cheque Ex. P.2, intimation issued by the Bank as per Exs. P. 3 and P.4 and postal acknowledgement and copy of the legal notice as per Exs. P.5 and P.6 respectively. On behalf of the accused, accused 3-Sri Manjunath Raju was examined as D.W. 1. The Trial Court after considering the contentions of the Counsel appearing for the parties and the material on record, held that the complainants have proved beyond reasonable doubt that the accused 2-respondent herein has committed the offence punishable u/s 138 of the Act and, accordingly, sentenced the accused 2 to undergo simple imprisonment for six months and to pay a fine of Rs. 6,60,000/- and in default of payment of fine, to undergo simple imprisonment for further period of six months and if the fine amount is recovered from the accused out of Rs. 6,00,000/-, the same shall be paid to the complainant as compensation and acquitted accused 1 and 3 u/s 255(1) of the Cr.P.C. of the offence alleged against them u/s 138 of the Act and being aggrieved by the order of conviction, accused 2 preferred Criminal Appeal No. 15074 of 2000 on the file of the XIII Additional Sessions Judge, Mayohall Unit, Bangalore, and the Appellate Court by judgment dated 28.9.2001, set aside the order of conviction passed against accused 2-appellant before the Appellate Court and, acquitted accused 2 of the offence punishable u/s 138 of the Act and accordingly, allowed the appeal by judgment dated 28.9.2001 and being aggrieved by the said judgment of acquittal, this appeal is filed by the complainants.

3. I have heard the learned Counsel appearing for the appellants and the learned Counsel appearing for the respondent. Having regard to the contentions urged, the point that arises for determination is,

Whether the judgment of acquittal passed by the Appellate Court is justified or calls for interference in this appeal?

and I answer the point for determination by holding that the order of acquittal is justified as per the final order for the following:

REASONS

3.1 It is clear from a perusal of the judgment passed by the Appellate Court that

the Appellate Court has set aside the order of conviction passed against accused 2-respondent herein mainly on two grounds: firstly, the plea is not recorded in accordance with law and, secondly, the joint statement of the accused was recorded u/s 313 of the Cr.P.C. It is clear from a perusal of the original records maintained by the Trial Court that both the reasons assigned by the Appellate Court are contrary to the material on record as the Trial Court has not recorded the joint statement of the accused u/s 313 of the Cr.P.C., and separate statement have been recorded in respect of each of the accused. It is also clear from a perusal of the original records maintained in C.C. No. 26641 of 1999 that the joint plea of the accused is not recorded as held by the Appellate Court and, wherefore, both the reasons assigned by the Appellate Court for setting aside the order of conviction passed by the Trial Court are erroneous. In view of the fact that the order of acquittal passed by the learned Sessions Judge reversing the judgment of conviction passed by the Trial Court for the said two reasons, which if are erroneous and the fact that the Appellate Court has not considered the merits of the case to find out as to whether the order of conviction passed against accused 2-respondent herein by the Trial Court is justified, it would be appropriate that the matter is remitted to the Appellate Court and, accordingly, I pass the following order:

The appeal is allowed. The order passed by the XIII Additional Sessions Judge, Mayohall Unit, Bangalore, dated 28.9.2001 in Criminal Appeal No. 15074 of 2000 is set aside and Criminal Appeal No. 15074 of 2000 is remitted to the Court of the XIII Additional Sessions Judge, Mayohall Unit, Bangalore, with a direction to dispose of the appeal on merits in accordance with law. All the contentions of the parties are kept open to be urged before the Appellate Court.