

(2006) 12 KAR CK 0005

In the Karnataka High Court

Case No : Criminal Appeal No. 910 of 2000 (SJ)

Ranjitha Balasubramanian and Another

APPELLANT

Vs

Shanthi Group and Others

RESPONDENT

Date of Decision : 12-12-2006

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (2008) 1 BC 92 : (2007) 2 CivCC 362 : (2007) 5 RCR(Criminal) 861

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

Bench : Single Bench

Advocate : B.K. Sampath Kumar, for the Appellant; C.V. Nagesh, for the Respondent

Judgement

V.G. Sabhahit, J.—This appeal is filed against the judgment of acquittal passed by the Court of the XIV Addl. Chief Metropolitan Magistrate, Mayohall, Bangalore, dated 21.6.2000, dismissing the complaint and acquitting the accused of having committed the offence punishable u/s 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the "Act").

2. The power of attorney holder of the appellants herein filed a complaint before the Addl. C.M.M., Bangalore, alleging that the accused had received a sum of Rs. 6,00,000/- from the complainant promising that a plot of land developed by the accused would be sold to them and afterwards, the complainants came to know that the accused have not developed any land and they demanded the accused to return their money and the accused agreed to refund the amount with interest and issued a cheque for Rs. 5,70,000/- on 25.1.1999 drawn on Canara Bank, Lalbagh West Gate Branch, Bangalore, and when the said cheque was presented for payment, the same was dishonoured for "insufficient funds" and thereafter, notice was issued to the accused on 10.2.1999 demanding the amount of the cheque and the same was not paid by the accused and wherefore, the accused have committed the offence punishable u/s 138 of the Act.

3. Summons was issued to the accused. Plea of the accused was recorded and

the accused pleaded not guilty. On behalf of the complainants, power of attorney holder was examined as PW1 and accused No. 3 was examined as DW 1 and the complainants got marked Exs. P1 to P9. The Trial Court after considering the contentions of the parties and the material on record, dismissed the complaint on the ground that Sri N. Ramesh Shankaran, who has filed the complaint stating that he is the power of attorney holder of the appellant-complainants, has not produced the power of attorney and in the absence of proof of power of attorney, he has not proved that he was authorized to file the complaint on behalf of the principal and he has also not proved that he was authorised to depose on behalf of the principal and in the absence of power of attorney, the complaint is not maintainable and wherefore, it is unnecessary to go into the other points involved in the case and accordingly, acquitted the accused of the offence alleged against them u/s 138 of the Act by judgment dated 21.6.2000 and being aggrieved by the same, this appeal is filed.

4. I have heard the learned Counsel appearing for the appellant-complainants and the learned Counsel appearing for the respondent-accused. Having regard to the contentions urged, the point that arises for determination is:

Whether the judgment of acquittal of the respondent-accused passed by the Trial Court calls for interference in his appeal?

I answer the above point for determination in the negative as per the final order for the following:

REASONS

5. It is clear from a perusal of the material on record including the original records in PCR No. 199/99, later Numbered as C.C, No. 26132/1999 that the complaint is filed by the power of attorney holder - Sri N. Ramesh Shankaran. Sworn statement of Sri N. Ramesh Shankaran is recorded and summons is issued to the accused and during trial also, Ramesh Shankaran has been examined as PW1. However, the power of attorney authorising Sri Ramesh Shankaran to file complaint or to give sworn statement on behalf of the principal or to give evidence on behalf of the principal is not produced before the Trial Court and when the power of attorney holder has not produced the power of attorney to prove that he has been authorised to file the complaint and depose on behalf of the principal, the Trial Court has rightly held that in the absence of proof of the power of attorney executed in favour of Sri N. Ramesh Shankaran, the person who has filed the complaint, the complaint is liable to be dismissed and the accused are entitled to be acquitted without going into the other questions involved in the case. The apprehension of the learned Counsel appearing for the appellants is that since the accused are acquitted by dismissing the complaint as not maintainable for non-production of power of attorney, it would not be possible for the appellants to file the complaint by themselves before the Trial Court. It is clear from the proviso to Section 142 of the Act inserted by Act No. 55 of 2002, which has come into effect from 6.2.2003, that the cognizance of a

complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period. Under the circumstances, it is open to the appellants to work out their remedy in accordance with law and order of acquittal would not come in the way of the appellants working out their remedy in accordance with law and accordingly, I answer the point for determination and pass the following Order:

The judgment of acquittal passed by the XIV Addl. C.M.M., Mayohall, Bangalore, dated 21.6.2000 in C.C. No. 26132/1999 by dismissing the complaint is confirmed. However, the said order of acquittal of the respondent-accused by dismissing the complaint, would not preclude the appellants wherein to work out their remedy in accordance with law.

6. Accordingly, the appeal is disposed of.