(2011) 03 KAR CK 0215

In the Karnataka High Court

Case No : Criminal Petition No. 5435 of 2010

Shajahan J. Kutty	APPELLANT
Vs	
Kotak Mahindra Bank Limited	RESPONDENT

Date of Decision : 25-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2011) 03 KAR CK 0215

Hon'ble Judges : K.N. Keshavanarayana, J

Bench : Single Bench

Advocate : M. Prabakar, for the Appellant;

Final Decision : Dismissed

Judgement

K.N. Keshavanarayana, J.—The grievance of the Petitioner in this petition filed u/s 482 Code of Criminal Procedure is that one of the cheques issued by the Petitioner in favour of the Respondent -Bank at the time of availing the loan, towards the monthly installments, has been misused by the Respondent by filling up fanciful amount covering the entire amount said to be due as on the date of the presentation of the cheque and therefore the cheque in question was not issued for discharge of any debt or liability as such the prosecution launched against him for the offence punishable u/s 138 of the N.I. Act is liable to be quashed.

2. I have heard the learned Counsel for the Petitioner.

3. There appears to be no serious dispute at this stage that the Petitioner availed financial facility from the Respondent - Bank to an extent of Rs. 3,1.8,000/- agreeing to repay the same in equated monthly installments of Rs. 12,310/- starting from 1.11.2007 ending on 1.10.2011. It also appears that at the time of availing the loan, the Petitioner had issued cheques covering equated monthly installments agreed upon so that on the respective due dates the cheques could

be presented and encased by the Respondent - Bank. One such cheque, according to the Petitioner, has been presented on 25.1.2010 by the Respondent - Bank filling up the amount of Rs. 2,21,958/-, though the said cheque was also one of the series of cheques issued at the time of availing the loan towards monthly installments. As the said cheque came to be dishonored on presentation, the Respondent - Bank issued notice as required by Clause (b) of 138 of the N.I. Act and since the Petitioner did not comply with the demand, the complaint u/s 200 Code Of Criminal Procedure for the offence u/s 138 of the N.I. Act has been filed. The learned Magistrate before whom the complaint, was presented, has taken cognizance and ordered issue of summons. On coming to know of the same the Petitioner has presented this petition.

4. As noticed supra, admittedly the Petitioner availed loan from Respondent - Bank and had issued several cheques. Respondent - Bank stated to have filled up one of the cheques towards the amount said to be due on date of presentation of the cheque. Having regard to the facts and circumstances of the case at this stage, the contentions urged before this Court are all in the nature of defences that could be raised before the trial Court. Therefore, this Court declines to exercise its jurisdiction u/s 482 Code of Criminal Procedure Therefore, I do not find any ground to entertain this petition. Accordingly, this petition is rejected.