

(2015) 07 KAR CK 0191
In the Karnataka High Court
Case No : Criminal Appeal No. 32 of 2010

Shriram Transport Finance Co. Ltd.

APPELLANT

Vs

Mahadevaiah

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378(4)
Negotiable Instruments Act, 1881 (NI) — Section 138, 139

Citation : (2016) 1 KCCR 196

Hon'ble Judges : C.R. Kumaraswamy, J

Bench : Single Bench

Advocate : M. Ashok Kumar, for the Appellant; K.B. Naveen Kumar, Advocates for the Respondent

Final Decision : Allowed

Judgement

C.R. Kumaraswamy, J—This Criminal Appeal is filed under Section 378(4) Cr.P.C. By the advocate for the appellant praying to set aside the order dated: 29.09.2009 passed by the XII ACMM and XX ACMM, Bangalore in C.C. No. 29381/2006 acquitting the respondent/accused for the punishable under Section 138 of N.I. Act and convict the respondent/accused.

2. The case of the complainant in the trial Court is as under:

The complainant in which the Shriram Investment Ltd. was amalgamated is a company engaged in the business of financing on vehicles under hire purchase scheme. Shriram Investment Ltd., which was the Limited Company came to be amalgamated with the Shriram Transport Finance Co. Ltd., vide order dated 25.11.2005 passed by the High Court of Judicature, Madras.

The complainant states that the accused has entered into hire purchase agreement (SIL/KHR/75451) with the complainant company i.e., Shriram Investment Ltd., on 25.01.2005 in connection with the hiring of vehicle bearing No. KA 01-1531 with one Sri Krishna S/o. Nagaraj as a guarantor. Towards the

full and final settlement, the accused had issued a cheque bearing No. 235660 dated 12.05.2006 drawn on Bangalore Dist. & Bangalore Rural Dist. Cooperative Central Bank Ltd., Head Office Branch, Chamarajpet, Bangalore-18, for a sum of Rs. 1,20,000/-. The accused issued the cheque in favour of Shriram Transport Finance Co.

The complainant further states that as per the assurance of the accused, the complainant presented the cheque bearing No. 235660 for collection through its banker State Bank of India, Hebbal Branch, Bangalore-24 (MICR 560002049). The cheque has been dishonoured and returned with an endorsement "Account Closed" and the complainant received the endorsement dated 01.06.2006 of the complainant Bank. The complainant states that after the intimation of dishonour, the complainant issued a legal notice on 21.06.2006 through RPAD to the accused. The accused has received the notice sent under Certificate of Posting, but the RPAD returned with memo "Not Claimed" and the same is returned. The accused knowing fully well has issued the cheque without having sufficient amount in his account.

3. The Power of Attorney Holder of the complainant company has filed an affidavit by way of evidence. He has stated that the accused has entered into hire purchase agreement (SIL/KHR/75451) with complainant company on 25.06.2005 in connection with the hiring of vehicle bearing No. KA-01-1531 with one Sri Krishna S/o. Nagaraj, as a guarantor. Towards the full and final settlement, the accused has issued the cheque bearing No. 235660 dated 12.05.2006 drawn on Bank of Bangalore District & Bangalore Rural District Co-op Central Bank Ltd., Head Office Branch, Chamarajpet, Bangalore-18, for a sum of Rs. 1,20,000/-. He has presented the cheque and the same has been dishonoured with an endorsement "Account Closed". Legal notice was issued through RPAD, but the same has been returned with memo "Not Claimed".

During the cross-examination, he states that in case if the borrowed loan is not paid, the vehicle will be sold. Report regarding value of the vehicle has not been produced. Promissory note was executed. The accused has not paid any installments towards loan amount. When the accused did not repay the loan amount, they issued a notice. That on 26.09.2005, the vehicle was sold for a sum of Rs. 1,85,500/-, prior to that, notice was issued. He is unable to tell the script of Ex. P1. The accused has issued notice to their company to furnish documents got executed by the accused at the time of lending loan. Witness identified the copy of legal notice and the same is marked as Ex. D1. They have replied to the said notice which is marked as Ex. D2.

4. Ex. D1 legal notice issued to the Sriram Transport Finance Company Ltd. under the instructions of the accused. He has sought for the following documents:

Loan agreement

Hypothecation agreement

Promissory Note

Enclosures to the Loan documents

Details of the Cheques received at the time of sanction of loan

Demand Notice

Auction notice

Sale Certificate and sale proceed

Statement of account

Seizer memo of the vehicle

5. Ex. D2 is the reply stating that necessary documents have been filed in the Court. Since the case is pending, the question of issuing certified copy does not arise. The documents which are listed in the legal notice are not in their custody.

Statement under Section 313 of Cr.P.C. was recorded. The accused has denied the allegation made against him.

6. The sum and substance of the finding of the Trial Court is as under:

The trial Court perused the Ex. P12-statement. As per Ex. P12, the vehicle of the accused was seized and auction sale proceeds shown as Rs. 1,85,000/-. It is contended by the accused that the entire loan amount including all expenses as contended by the complainant is recovered through the auction sale proceedings. Under such circumstances, the complainant has to prove that the auction sale proceedings is only for Rs. 1,85,000/-. To substantiate the same, the complainant ought to have produced the entire sale proceedings that too auction proceedings. Further the accused himself has asked the complainant to produce the documents namely loan agreement, hypothecation agreement, promissory note, enclosures of loan agreement of vehicle, cheque received at the time of sanction of loan, demand notice if any issued to the accused, auction vehicle notice issued if any to accused, sale certificate and sale proceedings of the said auction, statement of account, seizure of vehicle etc. Even the complainant admits that the accused has issued a notice as per Ex. D1 to furnish above said documents. The entire proceedings are the essential documents to show that the complainant has recovered Rs. 1,85,000/- only. The complainant has not produced the said documents before the Court to substantiate the same. The complainant also replied to the notice of accused. The complainant through Ex. D2-notice stated that the documents asked by the accused are not with its custody. It is germane to note that the complainant ought to have maintained those documents or he would have produced the same before the Court to substantiate legal debt as contended in complaint. Even otherwise it is germane to note that Ex. P12 said to be the account extract of loan account or hire purchase account of accused is not believable one. Because the complainant would have produced the original documents maintained in its office to show the

detailed entire entries made in loan account of accused. Account ledger should show the accrued interest as agreed, day-to-day transaction of accused, payments of installments or non-payments by accused, and other expenses incurred as shown in Ex. P12. The complainant would have produced the original documents atleast to compare the same with Ex. P12 and to find true or not. The contents of Ex. P12 are not sufficient to show that the same being copy of the account ledger extract maintained by its office.

The trial Court at para-10 of its judgment has mentioned that moreover it is specifically contended by complainant that the accused has gone to his office and settled entire loan account of Rs. 1,20,000/-. There is no document to show that the accused has agreed and settled the account on 12.05.2006 for Rs. 1,20,000/-. The complainant which being registered company would have maintained a specific register to show the settlement and would have taken signature of accused in said register or atleast a scrap of paper having settlements contents to show settlement. The complainant contended in reply notice Ex. D2 when the accused assures to furnish the said documents that it had no such document in the company. The trial Court has no hesitation to hold that Ex. P12 document is not genuine documents and not suffice to hold that the accused was in debt of Rs. 1,20,000/- and it had recovered auction sale proceedings of accused vehicle is Rs. 1,85,500/- only. The very documents of complainant turned futile to substantiate legal debt as on the date of cheque.

The trial Court at para-11 of the judgment has observed that no doubt the accused admits his signature in Ex. P. 3 cheque. But as already stated above the very legal debt as contended as on the date of cheque is not proved through cogent and convenient evidence. Therefore, an adverse inference can be drawn in favour of the accused. In the instant case, the accused succeeded in rebutting presumption provided under Section 139 of N.I. Act. The complainant failed to prove legal debt as on the date of cheque as contended. On the other hand it probables that the complainant might have taken cheque as per Ex. P3 as on the date of loan itself. Therefore, the trial Court held that the complainant has failed to prove these two points. Hence, the accused is acquitted for the offence punishable under Section 138 of N.I. Act and his bail bond and surety bond cancelled.

7. Feeling aggrieved by the same, the complainant has preferred this appeal.

8. Learned counsel for the appellant submits that the court below has gravely erred in acquitting the respondent/accused. The lower court has failed to notice that the respondent/accused has admitted the transaction and the cheque issued by him and ought to have convicted the respondent/accused for the offence punishable under Section 138 of N.I. Act. The lower Court failed to notice that when the accused himself has admitted the transaction, the production of certain documents such as loan agreement, hypothecation agreement etc. does not have any relevance in the above complainant. The trial Court erred in holding that there is no legal enforceable debt. Further lower court has failed to notice that if

at all there is any dispute regarding the contractual obligation, that is only civil in nature and it would not come under purview of this Court. The trial Court failed to notice that the complainant had not taken any cheques at the time of granting the financial assistance to the accused and erred in presuming that the complainant might have misused the cheque i.e. Ex. P3 as on the date of loan itself. The trial Court erred in holding that the complainant failed to prove the proper accounts and failed to prove legal debt as on the date of cheque and failed to notice that the accused had admitted the transaction and issuance of the cheque to the complainant company.

9. Learned counsel for respondent supports the impugned judgment. He further submits that the reasons offered by the trial Court is sound and proper. Even in the legal notice, particulars of auction proceedings have not been narrated. The complainant has not come to the Court with clean hands. He has suppressed the facts. He has also not produced what was the account for which vehicle was sold in the auction. This vital document has been withheld.

10. The presumption contained in Section 139 of N.I. Act is rebuttable one. It can be rebutted either by direct evidence or by the attendant circumstances. The complainant has to prove that the cheque which bounced was issued for discharging a debt or legal liability in whole or in part. The penal provision of Section 138 of N.I. Act could be attracted only when the complainant proves that the cheque in question was issued "for discharge in whole or in part of any debt or other liability." Failing to prove the debt or legally enforceable liability on the part of the accused satisfactorily, the complainant-financier had not made out the offence against the accused. When the complainant was not forthcoming with definite evidence, the penal provisions would not be attracted. The dishonour of cheque issued in consideration of future liability would not constitute an offence under Section 138 of N.I. Act. The material words in Section 138 of N.I. Act, "a cheque drawn for discharge of whole or in part of any debt or liability" should be interpreted to mean only the past or current liability existing at the time when the cheque is issued. The complainant did not produce hire purchases document and the documents sought by the accused. In the instant case, some facts are missing. Though the presumptions weigh in favour of the drawee of the cheque, yet the complainant is required to present his case by cogent evidence. In this case, the complainant has not produced all the relevant documents before the Court. The essential requisites of a debt are i) an ascertained or readily calculable amount; ii) an absolute qualified and present liability in regard to that amount with the obligation to pay forthwith or in future within a time certain; iii) the obligation must have accrued and subsisting and should not be that which is merely accruing.

11. In the instant case, as stated earlier, the complainant has not mentioned anything about the auction sale and what was the auction sale proceeding in the legal notice issued to the accused. The accused has sought for documents namely loan agreement, hypothecation agreement, promissory note, enclosures

of loan agreement of vehicle, cheque received at the time of sanction of loan, demand notice if any issued to the accused, auction vehicle notice issued if any to accused, sale certificate and sale proceedings of the said auction, statement of account, seizure of vehicle etc. These documents have not been produced by the complainant at the time of trial. On the other hand, the complainant contends that since the matter is pending for consideration before the Court, he has produced all the documents in the Court. On perusal of the records, it clearly shows that these documents have not been forthcoming in the trial Court records. It clears the doubt whether the cheque was issued at the time of borrowing a loan and after the auction sale. With holding these documents by the complainant, adverse inference has to be drawn in favour of the complainant.

12. This is an appeal against acquittal. The Court of appeal possesses full power to go into the entire evidence and all relevant circumstances to arrive at its own conclusion about the guilt or the innocence of the accused bearing in mind, however, that, 1) there is initial presumption of innocence of an accused and 2) the fact of his acquittal by the trial Court. In an appeal from acquittal the Court has to keep in mind the following four matters (1) The views of the trial Court as to the credibility of the witnesses, (2) the presumption of the innocence in favour of the accused, a presumption not weakened by the fact that the accused has been acquitted at his trial. An acquitted accused should not be put in peril of conviction on appeal save where substantial and compelling grounds exist for adopting such a course. (3) the right of the accused to the benefit of any doubt, and 4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage examining these aspects. The trial Court after carefully appreciating the evidence and materials placed before it has come to a conclusion that the complainant has not established its case. Therefore, the trial Court has acquitted the accused. The finding recorded by the trial Court is sound and proper and it does not call for interference.

13. In view of the above discussion, I pass the following:

This Criminal Appeal is dismissed.