

(2003) 07 KAR CK 0057

In the Karnataka High Court

Case No : Criminal R.P. No"s. 59 and 60 of 2002

Smt. Girija

APPELLANT

Vs

K. Vinay

RESPONDENT

Date of Decision : 18-07-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2005) 1 ALD(Cri) 2 : (2004) 1 BC 345 : (2003) ILR (Kar) 3252 :
(2003) 4 KCCR 3038 : (2003) 4 RCR(Criminal) 792

Hon'ble Judges : M.S. Rajendra Prasad, J

Bench : Single Bench

Advocate : Sathyanarayana Chalke, for Lex Nexus, for the Appellant; R.P. Someshekaraiah, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Prasad, J.—Both these revision petitions involve common question of law, parties in both the cases are common, common arguments have been advanced and hence, common order is being passed.

2. Both revision petitions filed by the accused u/s 397 r/w 401 Cr. P.C., are directed against the orders dated 26-11-2001 passed in C.C. Nos. 35574/2001 and 35575/2001, respectively, on the file of the 16th Addl., Chief Metropolitan Magistrate, Bangalore, wherein the learned Magistrate had taken cognizance of the offence, against the accused - revision petitioner, u/s 138 of the Negotiable Instrument Act, questioning the legality and propriety of the order impugned.

3. The Court has heard the arguments of Sri Sathyanarayana Chalke, for M/s Lex Nexus, learned Counsel appearing on behalf of the revision petitioner and Sri R.P. Someshekaraiah, the learned Counsel appearing on behalf of the respondent.

4. The learned Counsel for the revision petitioner strenuously contended that the material on record clearly shows that the orders impugned are illegal and

improper. Patently, the cheques and in question had been issued by the husband of the accused and in view of the provisions of the Negotiable Instruments Act, the learned Magistrate could not have taken cognizance of the offence against the accused, particularly, in view of the fact that the legal heirs of the drawer of the cheque cannot be punishable for the offence u/s 138 of the Negotiable Instruments Act. The learned Counsel also contended that, patently, the legal notice has been issued to the accused after lapse of 15 days and as such the proceedings before the criminal Court will vitiate even on this score. The learned Counsel relied upon the decision in DRAUPADI DEVI @ MAYA SIPPI vs STATE OF RAJASTHAN 2000 DCR 685 in support of his contentions, Placing reliance on the ratio laid down in the said decision, the learned counsel for the revision Petitioner prayed for allowing the revision petitions.

5. On the contrary, the learned Counsel for the respondent strenuously contended that the material on record clearly, shows that the order impugned under the revision petitions is legal and proper. The learned magistrate after proper application of mind had taken cognizance against the accused for the said offence. The learned Counsel also contended that on the death of the drawer of the cheque the legal heirs of such drawer could be brought on record and the learned Counsel has relied upon the provisions of the Negotiable Instrumental Act in support of his contention. The learned Counsel also contended that there is no illegality and impropriety in the orders impugned. Hence, the learned Counsel prayed for dismissal of the revision petitions.

6. The Court has carefully perused the material on record and has given its anxious thoughts over the contentions raised at the Bar.

7. On perusal of the material on record, it is seen that the Complaint u/s 138 of the Negotiable Instruments Act read with Section 200 of the Code of Criminal Procedure, came to be presented against the present revision petitioner by the respondent, particularly, alleging that the husband of the revision petitioner had issued two cheques for Rs. 50,000/- each and on presentation of the said cheques, the same came to be dishonoured and late on, legal notices had also been issued to the revision petitioner and thereafter two Private Complaints have been filed in respect of the said cheques. On perusing the said cheques and on examination of the complaint, the learned Magistrate on 26-1-2001 passed an order of taking cognizance of the offence against the revision petitioner for an offence u/s 138 of N.I Act and ordered for issue of process. This order has been in challenge under these revision petitions.

8. It is pertinent to mention that, patently, the legal notice had not been issued within 15 days from the date of information from the bank and there has been non-compliance of the statutory provision in this regard.

9. The other important aspect that requires consideration of the Court is whether the legal representatives of the drawer of the cheque can be arrayed as accused in a proceedings u/s 138 NI Act. From the material on record, it is seen that as

per the Complaint averments, the drawer of the cheques, i.e., husband of the revision petitioner, had died even before the presentation of the Complaint and as such the complaint came to be presented against the present accused - revision petitioner.

10. It is seen from the aforesaid decision that the Rajasthan High Court had been dealing with a case involving a Partnership Firm and the High Court has held that on the death of the drawer of the cheque, who was the partner of the firm, the prosecution cannot continue against his legal heirs, unless they are shown to be incharge of the affairs of the firm.

11. At this stage, it is necessary to mention to the elementary principle of law that the duty of judicature is to act upon the true intention of the Legislature and the function of the Courts is only to expound and not to Legislate. It is also necessary to mention another settled principle of law that the key to the opening of every law is the reason and spirit of law. Another settled principle of law that requires to be recalled is that when the words of statute are clear, plain and unambiguous, the Courts are bound to give effect to the meaning irrespective of the consequences.

12. Keeping in mind these settled principles of law, on careful perusal of the relevant statutory provisions of law, it is clear that the intention of the Legislature was not to make the provision for prosecution the legal heirs of the drawer of a cheque, in the event of dishonour of the cheque. That is the reason, that there are absolutely no statutory provisions under the Negotiable Instruments Act it is needless to say that the provisions of Negotiable Instruments Act are a self-contained enactment and wherever there is lacking, the provisions of the Code of Criminal procedure will have to be pressed into service, As stated earlier, there are absolutely no statutory provisions made under the Negotiable Instruments Act to cover the situation like this. Under the provisions of Section 394 Cr. P.C., it is seen that the said Section deals with the abatement of appeals filed u/s 377 or 378 Cr.P.C. This provision cannot be pressed into service for the reason that the Trial Court or this Court has not been dealing with an appeal under the said provisions. It is also necessary to mention that the provisions of Section 256 Cr.P.C. deals with situation that arise after the death of Complainant. In the case on hand, the drawer of the cheque, ought to be the accused in a proceedings of this nature, had died even earlier to the presentation of the complaint. Such being the case, the provision of Section 256 Cr.P.C. also cannot come to the aid of the complainant. From this aspect, it is clear that the statue law in this regard is totally silent to meet the situation. When this be the intention of the Legislature, the Courts of law will have to interpret the Law, keeping in the mind, the golden rules of interpretation and the Courts should always interpret the laws keeping in view the letter and spirit of law and such an interpretation should advance the purpose of Legislation. It is needless to say that if the Courts do not resort to this exercise the result thereon will not only be irregular and also illegal, so as to vitiate the entire proceedings.

13. In view of the facts and circumstances of the case and in view of the statutory provisions this Court is of the opinion that no proceedings can be initiated for an offence u/s 138 Negotiable Instruments Act, on the legal heirs of the deceased in the event of death of the drawer of the cheque. However this would not come in the way of complainant taking recourse and seek redressal under the Civil law. On careful perusal of the material on record, the learned Magistrate appears to have not bestowed his attention in carefully going through the complaint. There has been a specific mention of the death of the husband of the accused even as on the date of presentation of the complaint. From this, it is also clear that the order impugned under the revision petitions are illegal and improper and the same has resulted in miscarriage of justice. By settled principle of law, it is clear that the revisional powers of this Court are not only limited in its scope but also discretionary. In view of the facts and circumstances of the case, it would meet the ends of justice if this Court were to interfere with the orders impugned and set at naught the miscarriage of justice.

14. For the foregoing reasons both these revision petitions stand allowed and the order impugned are hereby set aside. Consequently, the proceedings against the revision petitioner in both the cases stand quashed.