(2011) 12 KAR CK 0144

In the Karnataka High Court

Case No : Criminal Appeal No. 2723 of 2006

Smt. Metilda D''mello D''mello Mahsion Mulki Post Chitrapu Mangalore — APPELLANT

Vs

Sri. P.G. Shankar — RESPONDENT

Date of Decision : 09-12-2011

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

Citation : (2011) 12 KAR CK 0144

Hon'ble Judges : Subhash B Adi, J

Bench : Single Bench

Advocate : Amar Correa, for the Appellant;

Final Decision : Dismissed

Judgement

Subhash B Adi

1. Appeal is by the complainant against the judgment of acquittal dated 12.10.2006 passed in C.C. No. 2273/05 on the file of the JMFC., Mangalore, Dakshina Kannada.

2. Compliant had filed a private complaint interalia alleging that the accused had borrowed sum of RS. 50,000/- from Chinnar Infax Finance, owned lay the complainant on 15.10.2004. Accused had issued a cheque bearing No. 324251 dated 27.12.2004, for sum of Rs. 50,000/- drawn on Syndicate Bank Main Road, Karipalla On presentation of the said cheque, it was dishonoured for the reason "Funds Insufficient". The complainant issued a notice by register post acknowledgment due calling upon the accused to pay the amount, The said notice was served on the accused. However, the accused failed to make payment, as such, the complainant was constrained to file a private complaint u/s 200 Cr.P.C for an offence punishable u/s 138 of N.I Act

3. On summons, the accused appeared before the trial Court and pleaded not

guilty. Complainant to prove her case, she got herself examined as PW1 and marked Exs. P1 to P7. Accused got himself examined at DW1 and also examined one witness Shashidar as DW2 and marked no documents.

4. The trial Court on appreciation of the entire evidence on record held that, the complainant has not proved her case that the accused had borrowed sum of Rs. 50,000/- from the complainant and accused failed to make the said payment and accordingly it acquitted the accused, It is against the said judgment of acquittal, the complainant is before the Court

5. Heard Sri Amar Correa, learned counsel for the appellant.

6. Appellant-complainant admitted to her evidence that she is running money lending business and it is also supported by Ex. P7-Money lending licence issued in the name of Chinnar Infax Finance proprietor, Smt. Metilda D''Mello, the complainant herein.

7. Accused had taken defence that he had borrowed money of Re, 15000/- from the complainant and further he has paid the same along with interest of Rs. 1.000/-. Accused: case is that, when he had approached the compliant, the complainant had insisted the accused to bring Rs. 50/ stamp paper, two blank cheques and two Photographs, accordingly, want to the complainant, and the complainant had taken signature on Rs. 50/- stamp paper as well as on Re. 10/- stamp paper. The complainant had also took two blank cheques and photographs of the accused. On payment the complainant did not return the cheques, Even after insisting, the same was not returned on the ground that the complainant has sent the cheques to head office at Mumbai and has not received the said documents from the head, office i.e., at Mumbai

8. To substantiate the case of the complainant the complainant had relied on the cheque notice issued, acknowledgement, agreement alleged to have been executed by the accused. The accused had not disputed the signature on Ex. P5 but has stated that the complainant taken signature on blank stamp paper.

9. The complainant in her cross-examination has admitted that she had taken blank cheques from the accused and she had also admitted that she used to writ amount of her choice. It is also admitted that the accused has paid Rs. 15,000/- by way of cheque and Rs. 35,000/- by way of cash. The complainant is running finance business and she has kept accounts however, the complainant has not produced any records maintained by her. Admittedly, she is running the money lending business.

10. The complainant has admitted that she used to take blank cheques and used to fill the amount in the said cheque. This admission and not producing the account books probabilise the case of the accused that the complaisant used to collect the blank cheques and stamp papers for security.

11. To prove that complainant had given Rs. 50,000/-to accused the. best evidence the complainant could have been produced was the account book. In

bar cross-examination she has admitted that she has used to write the amount of her choice on the cheque. Nothing has been produced to evident that the complainant had advanced Rs. 50,000/- to the accused and as to the rate of interest charged. In turn, admission that blank cheques were taken creates doubt and probabilise the case of the accused that such documents are taken at the time of lending money and may be accused who is in need of money must have been given blank signed documents,

12. The trial Court while considering the evidence on record has rightly held that the complainant has not proved that the accused got due to sum of Rs. 50.000/- and to discharge the same he had issued the cheques. I Sod that the findings of the trial Court is based on the proper appreciation of evidence.

13. In my opinion, the Judgment of the trial Court does not call for interference.

Accordingly the appeal falls and same is dismissed.

