
(2017) 02 KAR CK 0103
In the Karnataka High Court
Case No : 210 of 2015

Smt.A.V. Lakshmamma, D/o. Anjanappa	APPELLANT
Vs	
Sri.G.Babu Rao, S/o. Late Giddoji Rao	RESPONDENT

Date of Decision : 01-02-2017

Acts Referred:

[Negotiable Instruments Act, 1881](#), [Section 138](#), [Section 139](#), [Section 118](#) - Dishonour of cheque for insufficiency, etc., of funds in the account - Presumption in favour of h

Citation : (2017) 02 KAR CK 0103

Hon'ble Judges : Budihal R.B.

Bench : SINGLE BENCH

Advocate : Shivaprakash G.K, M.Subramani

Final Decision : Dismissed

Judgement

1. Petitioner and learned counsel appearing for petitioner both are absent. No representation. Learned counsel appearing for respondent present.
2. Heard the learned counsel appearing for the respondent.
3. This is the revision petition filed by the petitioner/ accused being aggrieved by the judgment and order of conviction dated 26.04.2014 passed by the XVIII A.C.M.M. Court at Bangalore in C.C.No.12167/2007, wherein, the accused has been convicted for the offences under Section 138 of Negotiable Instruments Act and so also challenging the judgment and order of the First Appellate Court dated 20.02.2015 passed by the Fast Track Court (Sessions) Judge-V, Bangalore City in CrI. Appeal No.504/2014.
4. Brief facts of the case of the complainant, are that accused borrowed Rs.80,000/- from the complainant on 10.1.2006. She has executed on demand promissory note and consideration receipt to that effect. Thereafter, towards discharge of this loan and interest, accused has issued a cheque for Rs.94,400/-

to the complainant on 16.1.2007. When it was presented for encashment, same was dis-honoured with an endorsement that accused was not having sufficient funds in her account. The accused requested the complainant to re-present the said cheque on 20.2.2007. Accordingly, the complainant re-presented the cheque to the Bank. The same was also dis-honoured with the endorsement that she was not having sufficient funds in her account. Thereafter, the complainant issued legal notice to the accused to pay the cheque amount. Notice was sent by RPAD and UCP on 19.3.2007. Notice was served on the accused. Even then, she has not paid the amount. Hence, the complainant filed the private complaint before the Magistrate Court.

5. Heard the learned counsel appearing for respondent. He submitted that the complainant placed satisfactory material before the Magistrate Court which was accepted and accused has been convicted. When the judgment of the Trial Court was challenged before the First Appellate Court, the First Appellate Court dismissed the appeal confirming the judgment and order of conviction. Hence, he submitted that there is no merit in the case and same is to be dismissed.

6. I have perused the judgment and order of conviction passed by the Trial Court, so also, the judgment and order of the First Appellate Court and the grounds urged in this revision petition.

7. The defence of the accused before the Trial Court that Ex.P1, cheque was not issued in favour of the complainant in discharge of debt or liability. But, however, she admitted that she borrowed the amount of Rs.20,000/- from the complainant and at that time, issued Ex.P1, blank signed cheque as a security. So this goes to show that the revision petitioner/accused admitted the signature on the cheque so also the issuance of the cheque in favour of the complainant. But however, her contention that it was furnished as a security for the loan amount of Rs.20,000/-. When the cheque was presented two times, same was dis-honoured, therefore, initial presumption in favour of the complainant as per Section 118 and 139 of Negotiable Instruments Act. The accused who took the specific contention that it was given as a security for the loan amount of Rs.20,000/-, burden is on the accused to place satisfactory material in proof of her defence so also, it is the burden on her part to rebut the presumption. But looking to the judgment of the Trial Court as well as the First Appellate Court, both Courts have discussed that the accused failed to rebut the presumption and on the other hand, the complainant has proved his case to the satisfaction of the Court. There are concurrent findings of the Courts below, so far as the factual aspect is concerned. Therefore, this court cannot re-assess the factual aspect in this revision petition as the scope of the revision petition is limited. The petitioner herein has not at all made out a case of grave illegality committed by the Courts below in coming to such a conclusion. Therefore, there are no justifiable and valid grounds for this Court to interfere into the judgment of the Courts below either to modify or to set aside the said judgments. Revision petition fails and the same is hereby dismissed.