
(2010) 10 KAR CK 0027
In the Karnataka High Court
Case No : Criminal Appeal No. 516 of 2008

Sri. G. Seetharamu

APPELLANT

Vs

Sri. K.G. Thyagaraju, Assistant Artisan and Smt. B. Pramila

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

Citation : (2010) 10 KAR CK 0027

Hon'ble Judges : Huvadi G. Ramesh, J

Bench : Single Bench

Advocate : B.S. Hadimani, for the Appellant; Prabhu and Srinivas Law Associates, for the Respondent

Final Decision : Allowed

Judgement

Huvadi G. Ramesh, J.—This appeal is by the complainant assailing the order of the XVIII Addl. CMM, & XX ASCJ, Bangalore, in C.C. No. 15015/2005 dated 05.04.2007.

2. According to the complainant, accused Nos. 1 and 2 being the husband and wife had borrowed a sum of Rs. 6 lakhs from the complainant as hand loan for their domestic necessities and towards discharge of their liability, both of them issued a cheque dated 14.02.2005 drawn on Syndicate Bank, Malleswaram Branch, Bangalore, for Rs. 6 lakhs, which when presented for encashment, was returned for insufficient funds. Accordingly, after causing legal notice, since the accused persons did not make payment, the complaint was filed. The trial Court, after enquiry, has dismissed the complaint. Hence, this appeal.

3. Heard.

4. So far as issuance of notice is concerned, the notice sent to the accused has been returned with a shara "not claimed", hence, it has to be held, there is deemed service of notice.

5. The trial Court having noted that the complainant and his Counsel were

absent, on the strength of the statement made by the complainant in his cross-examination that the accused have to pay Rs. 3,50,000/-, without reading the evidence fully, has misunderstood itself and opined that the complainant has not made out the case against the accused.

6. According to the complainant, the cheque amount of Rs. 6 lakhs is towards the principal as well as towards the interest. The trial Court has come to the conclusion that the cheque was not presented before the concerned bank and it was not dishonoured. Might be that, Ex. P19 would not have been presented. But Ex. P1 is presented and, no opportunity was given to the complainant to address his argument. The trial Court on its own, has come to the conclusion that there is another cheque at Ex. P19 and that is not presented for encashment and as such, there is no cause of action to file the complaint

7. So far as the cheque at Ex. P1 is concerned, it is for Rs. 6 lakhs and as per the endorsement, it came to be dishonoured for insufficient funds. Such being the case, the trial Court should have considered the material evidence on record in entirety instead of considering it in piecemeal. The approach of the trial Court is erroneous and the impugned order calls for interference.

8. Accordingly, appeal is allowed and the impugned order is set aside. The matter is remitted to the trial Court for disposal in accordance with law, after affording opportunity to both the parties.

The matter be posted before the trial Court on 22.11.2010. On that day parties are directed to appear before the trial Court. Office to send back the records.