

(2013) 06 KAR CK 0103
In the Karnataka High Court
Case No : Criminal Appeal No. 75 of 2013

Sri K.R. Shivanna

APPELLANT

Vs

Smt. M.T. Kamalakshi

RESPONDENT

Date of Decision : 24-06-2013

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 138(b)

Citation : (2013) 06 KAR CK 0103

Hon'ble Judges : B.V. Pinto, J

Bench : Single Bench

Advocate : S.P. Kulkarni, for the Appellant; Nagaiah and Sri R.D. Pancham, for the Respondent

Final Decision : Allowed

Judgement

B.V. Pinto, J.—Heard Sri. S.P. Kulkarni, learned counsel appearing for the appellant and Sri. Nagaiah, learned counsel appearing for the respondent. Though this matter is posted for admission, with the consent of both the counsel the matter is disposed of. This appeal, is filed challenging the judgment dated 16.11.2012 on the file of the additional Civil Judge and JMFC, Somwarpet, in C.C. No. 233/09 acquitting the respondent of the offence u/s 138 of the NI Act.

2. It is the case of the complainant that the accused has issued a post dated cheque towards repayment of a loan given by the complainant to the accused, bearing No. 740433 dated 25.04.2008 for Rs. 1,50,000/-, which was drawn on the Karnataka Bank, Kudige, and when the said cheque was presented for payment on 25.04.2008, the bank had endorsed stating that funds standing to the credit, of accused are insufficient to honor the cheque. Thereafter the complainant had issued a notice u/s 138 of the NI Act by registered post as well as under certificate of posting (UCP). The registered post issued in the name of the respondent in her Kudige Village address was returned as not claimed, whereas the notice under UCP according to the complainant is duly served on the accused

3. Thereafter, after the appearance of the accused before court, the complainant got examined himself as PW1 and also examined one S. Sheshadri as PW2. The defence of the accused was one of total denial. The accused also challenged the said proceedings on the ground that she has not received the notice u/s 138 of the NI Act. The respondent examined herself as DW1 and produced Exs. D1 and D2 which are the copies of the ration card and voter's ID of the respondent. She has contended that she is residing in Kudige Village and not in Kudlur Village to which address the notice u/s 138 NI Act was sent.

4. The learned Magistrate on hearing the complainant and the accused held that the statutory notice issued to the respondent is not sent to her correct address and therefore, there is no compliance of section 138(b) of the NI Act. Hence relying on the rulings of the Hon'ble Supreme Court he has acquitted the accused of the offence mentioned above of the charges against her

5. Sri. S.P. Kulkarni, learned counsel for the appellant submits that the respondent had given the address as Kudlur Village, Mullusoge Post, Somwarpet Taluk, Kodagu, both in her complaint and in the correspondence. However she, has received the notice under certificate of posting. The Registered notice has been sent back as "not claimed". He submits that the respondent having known the sending of the notice has purposely not claimed the notice and therefore there should have been an order that the respondent is duly served with the notice Ex. P3 issued by the complainant's counsel. Learned Magistrate has erroneously held that the respondent is not residing in Kudlur Village and held that she is a resident of Basavanathur, based on the Exs. D1 and D2. He therefore submits that since the case has been decided only on the basis of non-receipt of notice u/s 138 of the NI Act, the matter be remanded back to the court for disposal after holding that the respondent is duly served the notice Ex. P3. He also relied on the judgment of the Kerala High Court reported in Bhavani Auto Distributors Vs. K. Muraleedharan,

6. Sri. Nagaiah, the learned counsel appearing for the respondent on the other hand supported the order of the trial court

7. This court has issued a notice to the respondent to the address given in the cause title of the trial court namely, Industrial Extension, Kudlur Village, Mullusoge Post, Somwarpet Taluk, Kodagu District. When the same was tendered for service through the Sub-Inspector of Police, Kushalnagar Police station, Kushalnagar at Kodagu District, the endorsement of the police indicates that on 18.04.2013 the police belonging to Kushalnagar had infact had gone to the Kudlur Village and tendered the notice to one Kamalakshi and when the service was tendered to her she contacted her counsel and since her counsel advised her not to receive, the notice from this court, she has refused to receive the notice of this court. The sub-Inspector of police, Kushalnagar police station has sent the endorsement to this court through the S.P. Kodagu District. It is seen from the record that a mahazar has been drawn by the police of Kushalnagar police station in the presence of two witnesses H.K. Somanath and H.V. Dinesh, both of

whom had signed the endorsement. Therefore this court by order dated 10.06.2013, directed the respondent to be present before this court today. The respondent is present before court today. The court questioned the respondent in the presence of both the counsel and she has stated that the police had infact tendered the notice of this court to her and after reading the notice she was taken to the police station and in the police station she contacted her advocate who advised her not to receive the notice. Hence it is clear that the respondent was found in the address given in the cause title of the trial court order that is Kudlur Village, Mullusoge Post, Somwarpet Taluk, Kodagu District.

8. Under the circumstances the defence taken by the respondent before the trial court that she is not residing in the address given in the notice Ex. P3 as mentioned in cover Ex. P6 is false and she had infact not claimed the cover Ex. P6.

9. On the basis of the aforesaid materials, I hold that the respondent is deemed to have served with the notice u/s 138 of NI Act. Since the matter is yet to be disposed of on merits, the case is remanded back to the trial court for disposal on merits by holding that the service of the notice issued on the respondent is sufficient compliance of Sec. 138(b) of the N.I. Act.

10. In that view of the matter, this appeal is allowed. The order dated 16.11.2012 on the file of the additional Civil Judge and JMFC, Somwarpet, in C.C. No. 233/09 is hereby set aside. The matter is remanded, back to the trial court with a direction to dispose of the matter in accordance with law on merits without being influenced by the observations made herein except to the extent that the notice u/s 138 NI Act is held to be sufficiently served on the respondent.

11. All other contentions raised by the respondent before the court below is kept open. Having regard to the fact that the cheque is of the year 2008 and the respondent is a woman, the trial court is requested to dispose of the case as expeditiously as possible within a period of six months from the date of receipt of the copy of this order.

Both the appellant and respondent are at liberty to adduce further evidence if, need be, in support of their contentions raised before the trial court.