

(2014) 03 KAR CK 0035
In the Karnataka High Court
Case No : Criminal Appeal No. 1621/2007

Sri Yaswanth Parameshwar Mangarshi	APPELLANT
Vs	
Sri Venkatraman Ganapati Hegde	RESPONDENT

Date of Decision : 13-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 313
Negotiable Instruments Act, 1881 (NI) — Section 138, 139, 87

Citation : (2014) 03 KAR CK 0035

Hon'ble Judges : K.N. Phaneendra, J

Bench : Single Bench

Advocate : Vijay Malali, Advocate for Sri Jeevan J. Neeralgi, Advocate for the Appellant; C.E. Banakar, Advocate for Sri A.P. Hegde, Advocate for the Respondent

Final Decision : Dismissed

Judgement

K.N. Phaneendra, J.—This appeal is filed for setting aside the judgment dated 27.08.2007 passed by I Addl. J.M.F.C., Sirsi, in C.C. No. 1389/2001, convicting the accused for the offence punishable u/s 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as "the N.I. Act" for brevity).

2. The short question involved in this appeal is, whether the trial Court has committed any serious error in holding that the disputed cheque is materially altered and thereby accused is acquitted for the offence punishable u/s 138 of N.I. Act.

3. The brief factual aspects that emanate from the records are that, the appellant--complainant has filed a complaint u/s 200 of Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C." for brevity) against the accused - respondent for the offence punishable u/s 138 of N.I. Act. It is alleged that in the month of January 2000 the respondent has borrowed a hand loan of Rs. 52,000/- from the appellant and on demand he has issued a cheque bearing No. 596540 drawn on K.D.C.C. Bank, Market Yard branch, for a sum of Rs.

52,000/-. On presentation of same to the said Bank through Suverna Co-operative Bank, Sirsi Branch, for encashment on 24.07.2000, the same came to be dishonoured with an endorsement as "funds insufficient". A legal notice, as contemplated under law, was issued to respondent on 25.01.2001, which was served on 01.02.2001. It appears that within the prescribed period complaint was filed. So far as these aspects are concerned, there is absolutely no dispute on the part of respondent. The learned Magistrate has taken cognizance and recorded the plea of respondent, who has denied the allegations made against him. Evidence was recorded, complainant has examined himself as P.W. 1 and got marked Exs. P-1 to P-5. At the time of recording the statement u/s 313 of Cr.P.C., the respondent-accused has denied the allegations made against him and has not chosen to lead any evidence on his side. On overall analysis of the entire materials on record, the trial Court has acquitted the respondent on the ground that the cheque has been materially altered.

4. Though at the time of taking cognizance and recording of evidence, an initial presumption was drawn in favour of complainant u/s 139 of N.I. Act, the learned Magistrate has held that in view of material alteration of cheque the said presumption drawn in favour of complainant has been totally destroyed. It is just and necessary to find out on what basis the learned Magistrate has come to a conclusion that the cheque has been materially altered. The learned Magistrate at paragraphs 18 and 19 of the judgment has specifically stated that the Ex. P2 cheque apparently discloses that the figures and words have been materially altered. It appears that the cheque has been issued for Rs. 2,000/- and later one digit "5" has been prefixed to Rs. 2,000/-. While writing the amount in words, it has been written as Rupees two thousand only and later the word "fifty" has been added in vernacular language as After considering all these aspects, the learned Magistrate has come to a conclusion that there is material alteration in the cheque and hence, has acquitted the accused.

5. I have carefully perused the said cheque which is marked at Ex. P-2. It appears that cheque has been issued for Rs. 2,000/-. The numerical digits are of small size, but the digit "5" added and prefixed to the digits "Rs. 2,000/-" is of bigger in size and also a symbol of hyphen "i.e., -" has been inserted between the digits "5" and "2". It appears that the accused might have perhaps used the symbol of hyphen in order to avoid any manipulation or alteration. Now coming to the amount written in words, it appears that earlier it was written as "Two thousand" but, later the word "fifty" has been written. On the whole, it has to be read as . The common practice of writing Rs. 52,000/- in words in kannada language is .

6. Even though all these material alterations have been brought to the notice of complainant, he has not at all given any explanation, but has vaguely stated that they were all made by the accused himself. During the cross-examination also complainant has stated that the material alterations have been done by accused. Even if it is presumed that the alterations have been made by accused, then

atleast he should have put his signature to certify that he himself has made the alteration. Hence, it cannot be believed that the accused has made such alterations even prior to issuance of cheque to the complainant. In this regard it is relevant to quote Section 87 of N.I. Act which reads thus-

87. Effect of material alteration - Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Alteration by indorsee - And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

7. In view of the above said facts and circumstances of the case, I do not find any strong reasons to interfere with the well reasoned judgment of acquittal recorded by trial Court. It is also a well settled principle of law that whenever a view is taken by trial Court on the basis of factual aspects and materials on record then that view should not be disturbed by Appellate Court even though other view is also possible while exercising the Appellate powers by the Appellate Court. Hence, the appeal is liable to be dismissed. Accordingly, appeal is dismissed.