

(2014) 11 KAR CK 0242

In the Karnataka High Court

Case No : Criminal Revision Petition No. 548 of 2013

Sujatha B.A.

APPELLANT

Vs

H.B. Veena

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2014) 11 KAR CK 0242

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Ravi L. Vaidya, Advocate for the Appellant; A.C. Balaraj, Advocate for the Respondent

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the petitioner who is before this Court challenging the concurrent findings of both the courts below in respect of a complaint for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the NI Act", for brevity).

2. The facts alleged are, that the petitioner had borrowed a sum of Rs. 6,16,000/- on 13.12.2006 from the respondent, in order to enable her to purchase a house site. She is said to be a Doctor of Ayurvedic Medicine and was running a clinic and therefore, she wanted to build a house close to her clinic and hence, had borrowed the money. She had agreed to repay the same within two months and had issued a cheque in discharge of the loan, dated 9.2.2007.

3. It is the case of the complainant that the cheque when presented for encashment, it was returned with the Banker's endorsement that the funds in the Account were insufficient.

The petitioner was informed of the dishonour, but she had not made any payment according to the petitioner, since there was no demand. However, she had requested the complainant to present the cheque over again. It transpires that it was again returned with an endorsement that the petitioner had chosen to

stop payment of the cheque. It was then that a demand notice was issued, which was said to have been returned unclaimed. The said notice was also sent by way of certificate of posting. It is claimed that the petitioner had failed to repay the amount and therefore, a complaint was lodged. The petitioner had set up a defence that she was not indebted to the respondent and it was in fact a cheque given in favour of her father-in-law which was in fact entrusted to one Rajareddy and it is the petitioner's suspicion that Rajareddy, in collusion with the respondent, had altered the cheque and misused the same. It was this defence which was sought to be projected before both the courts below and the same has been negated. There are clear findings of fact against the petitioner. The Trial Court had convicted the petitioner and sentenced her to pay a fine of Rs. 6,22,000/- and also to undergo simple imprisonment for a period of six months. That having been challenged in appeal, the Appellate Court has affirmed the judgment of the Trial Court. It is this which is under challenge in the present petition.

4. After having heard the learned counsel for the petitioner at length and on a perusal of the judgments of the courts below, the findings are clearly findings of fact and the circumstance that the cheque in question is not denied by the petitioner as having been issued on her Account and she also not having denied the signature on the cheque, but to claim that it had been issued in favour of another and therefore, was misused, was clearly a defence, the burden of proof of which was on the petitioner. Since that has not been done to the satisfaction of both the courts below, there is hardly scope for this Court to re-appreciate the evidence in this revision petition, when this Court is not sitting in appeal over the judgments of the courts below. Therefore, there is no merit in this petition on facts.

However, it is found that the Trial Court had imposed a punishment of simple imprisonment for a period of six months in addition to directing payment of a fine which corresponds to the amount of the cheque in sum of Rs. 6,16,000/- and in addition, a further sum of Rs. 6,000/- has been imposed which was to be paid as compensation to the respondent. The entire amount was to be paid as compensation to the complainant. The above punishment has been affirmed by the Appellate Court.

In the opinion of this Court, this punishment is disproportionate to the offence alleged. The offence is in the nature of a quasi-criminal offence and the object is to ensure prompt payment under a negotiable instrument and therefore, the punishment by way of payment of fine was enough and adequate. To further punish the petitioner by way of imprisonment was not welcome. It does result in a miscarriage of justice. Consequently, the judgment of both the courts below require to be modified to that extent.

The petitioner claims that she has already deposited 50% of the cheque amount before the Trial Court. It would therefore be necessary for the petitioner to deposit the remaining amount within a period of six weeks.

Hence, the petition is allowed in part. The judgment of the Trial Court as well as the Appellate Court are modified to eschew the punishment by way of imprisonment as imposed by the courts below. The judgments are otherwise affirmed in terms as above. The petitioner shall deposit the remaining amount within a period of six weeks. The respondent is permitted to withdraw the entire amount, after such deposit.