

(2024) 04 KAR CK 0003

In the Karnataka High Court

Case No : Criminal Revision Petition No. 463 Of 2024

Ubedur Rehaman

APPELLANT

Vs

H.E. Thimmachari

RESPONDENT

Date of Decision : 01-04-2024

Acts Referred:

Negotiable Instruments Act, 1881 — Section 118, 139

Citation : (2024) 04 KAR CK 0003

Hon'ble Judges : H.P. Sandesh, J

Bench : Single Bench

Advocate : Sowraba Jeevala L.M

Final Decision : Dismissed

Judgement

H.P. Sandesh, J

1. This matter is listed for admission and I have heard the learned counsel for the petitioner.

2. The factual matrix of the case of the complainant before the Trial Court is that accused had purchased total 490 kilograms of pepper for Rs.400/- per kilogram from the complainant worth Rs.1,96,000/-. The accused, in order to pay the said amount had issued a Cheque dated 27.09.2021 for Rs.1,96,000/- and when the Cheque was presented, the same was dishonored with an endorsement, 'Account Blocked Situation Covered in 2125' as per the endorsement dated 29.09.2021. Thereafter, legal notice was issued on 22.10.2021 calling upon the accused to pay the amount through RPAD. In spite of legal notice dated 22.10.2021, the accused neither complied with the order nor replied to the notice. Hence, the complainant filed the complaint and cognizance was taken and the accused was secured and he did not plead guilty. Hence the complainant examined himself as P.W.1 and also got marked the documents as Exs.P1 to P5. On the other hand, the revision petitioner has not adduced any rebuttal evidence and only defence was taken that the complainant used to visit the shop of the accused and he had

collected the Cheque only to pay the rent in favour of the owner. Though such defence was taken, in order to prove the said defence, not examined himself and even he did not enter into the witness box.

3. The Trial Court also taken note of the defence which has been taken and discussed the same in Para No.17 and so also with regard to service of notice in Para No.16 that the petitioner did not examine the postal authority for not serving the notice of Ex.P3 and postal receipt is also marked as Ex.P5 and no reply was given and after thought, the petitioner only took the defence of misusing of the Cheque. The Trial Court also in Para No.18 taken note of the fact that, since the accused is running a shop, he is having business knowledge and he is a prudent men. When such being the case, it is improbable to believe the defence of the accused and also taken note of the fact that no defence has been raised regarding writing of Ex.P1-cheque and giving the same by the complainant and even not denied the contents of the document of Ex.P1.

4. The Trial Court also in Para No.19, taking note of the judgment of the Apex Court in H. PUKHRAJ VS. D. PARASMAL reported in 2015 17 SCC 368, the judgment in M/S. METERS AND INSTRUMENT PRIVATE LTD. VS. KANCHANA MEHETHA reported in (2018) 1 SCC 560 as well as the judgment in KAUSHALYA DEVI MASSAND VS. ROOPKISHORE KHORE reported in (2011) 4 SCC 593, ordered to pay an amount of Rs.2,25,000/-, since the transaction is of the year 2021 and this judgment was passed in 2023 after lapse of two years of the said transaction. The said sentence to pay fine of Rs.2,25,000/- is not exorbitant and the same commensurate with the gravity of the offence and the amount payable by the revision petitioner. The Appellate Court also in the appeal, in detail discussed the material on record and taken note of the transaction between the parties and also considered the case of the revision petitioner. The Apex Court also taken note of the decision of three Judge Bench of Hon'ble Apex Court in M/ S. Modi Cements Ltd V/s Shri Kuchil Kumar Nandi reported in (1998) 3 SCC and discussed the evidence in detail and also comes to the conclusion that though suggestions were made and not led any rebuttal evidence. In detail discussed in paragraph No.24 and in paragraph No.29 comes to the conclusion that Ex.P1 – Cheque belongs to the account maintained by the accused, the signature found on the said Cheque is that of the accused. The said Cheque returned unpaid as account was blocked and even for issuing of Cheque afterwards blocked the account. All these factors were taken note of by the appellate Court. Even relied upon the judgment of the Rangappa's case with regard to the non-issuance of the reply notice and meticulously perused the material placed on record and except the said suggestion that Cheque was misused nothing is elicited from the mouth of PW1 and also no rebuttable evidence is also led by the accused and rightly drawn the presumption under Section 118 and Section 139 of NI Act. Hence, I do not find any ground to interfere with order of the Trial Court as well as the First Appellate Court. The scope of revision is very limited and this Court can only exercise revisional powers if any material has not been considered by the Trial Court as well as the First Appellate Court. Hence, no ground is made out

to entertain the revision petition.

5. In view of the discussions, made above, I pass the following:

ORDER

The Revision Petition is dismissed.