(2011) 12 KAR CK 0152

In the Karnataka High Court

Case No : Criminal Appeal No. 2653 of 2006

V. Basavarajappa APPELLANT

Vs

Basavarajaiah RESPONDENT

Date of Decision : 08-12-2011

Acts Referred:

Citation : (2011) 12 KAR CK 0152

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : K.A. Chandrashekara for M/s. H.S. Chandramouli and Assts, for the Appellant; G. Lakshmeesh Rao, for the Respondent

Final Decision : Dismissed

Judgement

Subhash B. Adi

1. Appeal by the complainant against the judgment of acquittal passed by the Fast. Track Court-I, Shimoga in Criminal Appeal No. 60/2004 dated 2nd October 2006, reversing the judgment of conviction passed by the J.M.F.C., Bhadravathi, in CC.No. 2009/1999 dated 7th October 2004.

2. Complainant had filed a private complaint interalia alleging that the accused had borrowed a sum of Rs. 70,000/- from him on 10.11.1998 and in discharge of the said loan, he had issued a cheque dated 10.11.1998 drawn on Canara Bank, Shimoga. The said cheque was presented on 1.1.1999 and on 13.1.1999 it was returned by the bank with an endorsement "fund insufficient", as such, the complainant issued a legal notice, however, the accused did not make the payment. Hence, complainant was constrained to file a private complaint.

3. On summons, accused appeared and pleaded not guilty.

4. To prove the case, the complainant got himself as PW-1 and produced Exs.P1 to P5. In the cross-examination of complainant, on the defence side, Exs.D1 to D6 were marked.

5. The appellate court on appreciation of the evidence acquitted the accused, holding that the complainant has not proved the transaction between himself and the accused and has also not proved that there is debt recoverable from the accused and accordingly, it acquitted the accused by reversing the judgment of trial court, as against which, this appeal is filed.

6. Heard Sri. K.A. Chandrashekara, learned Counsel for the appellant - complainant and Sri. Lakshmeesh Rao, learned Counsel for the respondent - accused.

7. No doubt, the complainant has produced the cheque, bank endorsement, legal notice issued to the accused and also acknowledgement. However, in his evidence, he has stated that, he had money in the Bank and he had withdrawn the money from the Bank about two months prior to the lending to the accused and had kept it in the house. In the cross-examination, complainant has admitted that, he has filed a suit for specific performance of contract against the accused and in the said suit, he has alleged that, he had made a payment of Rs. 1,05,000/- on 27.9.1999 to the accused and sought for decree of specific performance of the contract. On the defence side, though no evidence is led, but letters have been marked as Exs.D1 to D6. Ex.D5 shows that there was some transaction of chit between the accused and the complainant. Accused had taken a defence that blank cheque was taken towards the payment of chit instalment during 1993 to 1997 and the said cheque leaf has been misused by the complainant.

8. Admittedly, complainant has filed a suit in 1999 and in that suit, he had alleged that the agreement was dated 29.1.1999 i.e., just two months after his lending money. The sale consideration, according to the complainant, was Rs. 1,40,000/-, only Rs. 35,000/- balance was to be paid towards the sale consideration. If the complainant had already paid Rs. 70,000/-, he would have definitely mentioned that the balance amount of Rs. 35,000/- has already paid and excess Rs. 35,000/- is still remaining or he would have mentioned that separately he had a transaction of Rs. 70,000/-. He had not only not made any reference of Rs. 70,000/- payment to the accused, but in turn, he has admitted that, he has to pay Rs. 35,000/- balance of sale consideration to the accused in his suit, and he is ready and willing to pay the said amount. Apart from this, the complainant''s case is that, accused had borrowed a sum of Rs. 70,000/- on 10.11.1998 and also states that, accused issued the cheque on the very same day i.e., on 10.11.1998. If the cheque is dated 10.11.1998, it becomes encashable immediately thereafter. If the accused was in need of money, he would not have given cheque for the same date.

9. This probabalizes that the complainant has not proved that there is a legally recoverable debt. The defence taken by the accused probabalized that the complainant has not proved the passing of the consideration under the cheque.

10. The trial court without considering the evidence on record only on the basis

that the cheque issued has been dishonoured, presuming that it is legally enforceable debt, has erroneously convicted the accused. However, the lower appellate court on proper appreciation of the entire evidence has rightly held that the complainant has not proved his case. In my opinion, the judgment of the appellate court is sound and proper and it does not call for interference.

Accordingly, the appeal fails and same is dismissed.

