
(2013) 09 KAR CK 0300
In the Karnataka High Court
Case No : Criminal Appeal No. 2556 of 2008

Vasavi Credit Co-Operative Society Limited

APPELLANT

Vs

H.L. Manjunath

RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Citation : (2014) 1 KarLJ 722

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : K.L. Patil, for the Appellant; Hanumanthareddy Sahukar, for the Respondent

Judgement

Anand Byrareddy, J.—Heard the learned Counsel for the petitioner and the learned Counsel for the respondent. The appellant was the complainant before the Court below alleging of an offence punishable u/s 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "N.I. Act", for brevity). The complainant is a Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959. The accused-respondent is said to have issued a cheque to the complainant-Society dated 31-10-2006 for a sum of Rs. 59,970/- drawn on State Bank of Mysore, in discharge of a legal liability. When the cheque was presented for encashment, it was returned with an endorsement that, funds were insufficient. Therefore, the Society had issued a legal notice as required u/s 138 of the N.I. Act and followed up with the complaint. On process being issued, the accused had entered appearance and contested the case. The complainant had tendered evidence through P.W. 1 and marked documents at Exs. P. 1 to P. 8. On completion of the evidence, the statement of the accused was recorded u/s 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to "Cr.P.C.", for brevity). The accused had examined himself as D.W. 1 and also produced documents at Exs. D. 1 to D. 5. After hearing the arguments on both sides, the Court below had framed the following points for consideration:

(i) Whether complainant proves that accused is in discharge of legally

recoverable debt owed in favour of complainant society had issued cheque dated 31-10-2006 for a sum of Rs. 59,970/- drawn on State Bank of Mysore, Main Branch, Hospet, in favour of complainant society, when the said cheque presented for encashment within its validity time, it was returned with the endorsement "insufficient Funds" after bouncing the cheque, complainant got issued legal notice calling upon the accused to pay the cheque amount, even inspite of service of said notice, accused failed to make the said payment thereunder within the stipulated period, thereby committed an offence punishable u/s 138 of Negotiable Instruments Act?

(ii) What order?

2. The Court below held the same in the negative and acquitted the accused. It is that, which is under challenge in the present appeal.

3. The learned Counsel for the appellant would take this Court through the records to contend that the Court below has incorrectly concluded that there was no legally recoverable debt in respect of which, the cheque in question had been issued. The cheque itself is not in dispute. It has been issued on the account of the respondent and the same having been dishonoured is also evidenced by the memo issued by the bank in this regard. The respondent also does not dispute the compliance with the requirements u/s 138 of the N.I. Act and filing of the complaint. The respondent is also not disputing the signature on the cheque. The presumption was clearly in favour of the holder of the cheque. The contention that there was no liability was to be established by the respondent and that burden not having been discharged by the respondent, the Court below could not have found the case on behalf of the respondent in the face of material documents to establish the charge. The respondent herein was a guarantor in respect of a loan transaction and the liability to repay the loan, therefore, was jointly and severally by the principal debtor as well as the present respondent. Hence, the conclusion of the Court below that there was no pleading in the complaint as to the appellant having extended any loan to the respondent-accused and there was no legal liability is the conclusion in the face of the observation of the Court below that, no doubt, it would be a liability cast as guarantor to discharge the loan equally with that of principal debtor. The finding of the Court below is also contrary to the admission in the reply notice by the respondent, that he stood guarantor to the loan borrowed by one Ramanjini from the appellant and that the respondent was acquainted with Ramanjini. The Court below having directed the appellant to produce the loan ledger extract and other documents pertaining to the loan transaction, had been complied with by the appellant. The loan ledger extract and other documents clearly demonstrate that the amount borrowed by the accused was outstanding and it is in discharge of that loan, the cheque in question had been issued. However, the Court below has been misdirected by referring to Exs. D. 1 to D. 4 pertaining to the arbitration award, which was passed in respect of the loan transaction and the award sought to be executed in the Execution Petition No. 31 of 2004 having been dismissed

for non-prosecution and criminal case filed in C.C. No. 407 of 2004 having been withdrawn as not pressed on account of accused 1 having absconded and not being traced and the prosecution of that case having become redundant was withdrawn as not pressed, has resulted in the Court below incorrectly presuming that the criminal case was withdrawn and the matter was settled before the Lok Adalath and hence, there was no outstanding liability in respect of which, the cheque could have been issued by the respondent. The Court below further presumed that the cheque which may have been obtained as security for the due discharge of the loan, in the first instance was sought to be misused, notwithstanding the repayment of the money by virtue of the settlement. It is this, which is sought to be highlighted by the learned Counsel for the appellant by producing the memo Ex. D. 4, by drawing attention to the contents of the Ex. D. 4, which was a memo filed before the Criminal Court to withdraw the criminal case as not pressed and that there are no documents to indicate that there was any settlement before the Lok Adalath in discharge of the loan transaction. Hence, the presumption of which, the Court below has proceeded erroneously, has resulted in a miscarriage of justice. The cheque having been issued on the account of the accused-respondent and the signature on the same is not disputed. Due to the dishonour of the cheque, the cause of action for the complaint arose and hence, the Court below having held that the offence punishable u/s 138 of N.I. Act not having been proved, is only on the erroneous presumption as aforesaid, and without reference to the actual facts and circumstances.

4. While on the other hand, the learned Counsel for the respondent-accused would seek to justify the finding of the Court below.

5. It is no doubt true that the complainant has to satisfy the pre-conditions of filing the complaint as narrated hereinabove. The question for consideration before this Court is, whether there was material available before the Court to come to a conclusion that there was no legal liability in respect of which, the cheque had been issued by the respondent-accused. In this regard, the reasoning of the Court below is available at paragraphs 8-e, 8-f and 8-g. In paragraph 8-e, the Court below has extensively referred to the statements elicited from D.W. 1 in the course of his cross-examination. P.W. 1 had admitted that the accused-respondent was not present, but had availed the loan from the Society and that there was only the guarantor and further that, arbitration proceedings have been initiated against the principal borrower for the recovery of a sum of Rs. 25,000/- and that there was an award in favour of the Society and the execution petition was initiated against Ramanjini on the basis of the said award and Ramanjini had paid some amount to the complainant-Society, but the witness was unable to say as to what amount was paid by the Ramanjini. It was also admitted that there was a criminal case in C.C. No. 407 of 2004, initiated against Ramanjini and that the same was withdrawn before the Lok Adalath, as the matter was settled out of the Court. This was an admission made by P.W. 1 in the course of his evidence and this was in line with the defence set up by the

accused. This Court has found with reference to Ex. D. 1, where the decree-holder had received certain amount from the judgment-debtor and Ex. D. 2 was the copy of the execution petition, which was filed for recovery of Rs. 39,485/-. However, the complaint was presented in respect of a cheque for a sum of Rs. 59,970/-. Therefore, there was inconsistency as regards the amount that was due in respect of which, the cheque had been issued. Ex. D. 3 was an affidavit of the decree-holder submitted in execution Petition No. 31 of 2004. Ex. D. 4 was the certified copy of the order passed in C.C. No. 407 of 2004, and there is an order passed before the Lok Adalath that the matter has been settled and the complaint is dismissed. Further, it is found at paragraph 8-g, that the sequence of events as claimed by the complainant to the effect that, notwithstanding the arbitration proceedings, the execution petition and the criminal case, since the accused 1 was absconding and it was only the present respondent guarantor who was available and in the course of the proceedings, the respondent having come forward to settle the due on account of joint and several liability and having issued the cheque, the same having been presented and dishonored giving rise to cause of action for the complaint, ought to have been clearly pleaded in the complaint and that is not forthcoming. The Court below has opined that the burden cast on the accused to discharge the presumption that arose u/s 139 of the N.I. Act has been complied with, in that, it is established that there is no outstanding liability in respect of which, the cheque in question had been issued and hence, has acquitted the accused. The sequence of events and material that is placed on record, notwithstanding the vehement contention on the part of the Counsel for the appellant that there has been mis-interpretation of the circumstances by the Court below that the matter was never settled as claimed, but according to the ledger extract, the amount was outstanding etc., cannot be readily accepted. In view of independent recording by the Lok Adalath that the matter was settled, it cannot be presumed otherwise on the assertions of the appellant.

Therefore, the appeal lacks merit, and is dismissed.