
(2015) 08 KAR CK 0229
In the Karnataka High Court
Case No : Criminal Appeal No. 2643 of 2009

Venkatraman Venkatraman Hegde	Vs	APPELLANT
Crescent Foods Private Limited and Others		RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 139

Citation : (2015) 08 KAR CK 0229

Hon'ble Judges : P.D. Waingankar, J

Bench : Single Bench

Advocate : J.S. Shetty, for the Appellant; Dattatraya T. Hebbar, Advocates for the Respondent

Final Decision : Allowed

Judgement

P.D. Waingankar, J—This appeal is preferred against the judgment dated 20.03.2009 in C.C. No. 503/2001 on the file of Principal JMFC at Honavar, whereby the respondents/accused have been acquitted of the offence punishable under Section 138 of N.I. Act.

2. Brief facts of the case are as under:

"The Respondent/accused is a firm at J.P. Nagar, Bangalore represented by its Managing Directors (accused Nos. 1 and 2). The respondent-firm is running desiccated coconut powder unit. The complainant is growing large quantity of coconuts. At request of the accused the complainant supplied 45,000 coconuts on credit. For repayment of the value of the coconut, the accused issued a cheque dated 11.09.2000 for Rs. 2,70,000/- drawn on State Bank of Mysore, Singasandra Branch, Bangalore at the rate of Rs. 600/- per 100 coconuts. On presentation of the cheque by the complainant through his banker, the same was returned as "funds insufficient". The complainant issued a notice demanding the payment of the cheque amount within 15 days. Since there was no response, a complaint came to be filed before the Magistrate in C.C. No. 503/2001."

The accused appeared through the partners and denied the accusation. The complainant got himself examined as P.W. 1, one C.S. Subbaratnam as P.W. 2 and Vasant Gajanan Bhagwat as P.W. 3. Exs. P1 to P39 were marked. On behalf of the accused, one of its partners Smt. Prahbha Ishwar Hegde was examined as D.W. 1. Exs. D1 to D5 were marked. The Learned Magistrate on appreciation of evidence held that the complainant failed to establish the supply of coconuts and thereby existence of the liability under the cheque, which resulted in acquittal of the accused by the impugned judgment. Hence, this appeal.

3. I have heard both the learned counsel appearing for the complainant and the accused. Perused the records.

4. The learned counsel for the complainant would submit that the learned Magistrate misdirected himself by relying upon the ratio laid in the decision of the Supreme Court reported in a case of Krishna Janardana Bhat v. Dattathreya G. Hegde reported in 2008 SCW 738 and wrongly held that the complainant failed to prove the existence of liability and thereby acquitted the accused. It is submitted that the ratio laid down by the Supreme Court in Krishna Janardana Bhat's case has been overruled by the subsequent three judge bench decision of the Supreme Court in a case of Rangappa Vs. Sri Mohan, AIR 2010 SC 1898 : (2010) 2 BC 693 : (2010) CriLJ 2871 : (2010) 5 JT 259 : (2010) 5 SCALE 340 : (2010) 11 SCC 441 : (2011) 1 SCC(Cri) 184 : (2010) 100 SCL 389 : (2010) AIRSCW 2946 : (2010) AIRSCW 6043 : (2011) AIRSCW 404 : (2010) 4 Supreme 169 : (2010) 5 Supreme 206 , wherein it has been held that the presumption mandated by Section 139 of N.I Act includes a presumption that there exists a legally enforceable debt or liability. The accused failed to rebut the presumption. Hence, the learned counsel sought to set aside the judgment of the Court below and to convict the accused of the offence punishable under Section 138 of N.I. Act.

5. Per contra, the learned counsel appearing for the respondents-accused relying upon the decision of the Supreme Court in M/s. Indus Airways Pvt. Ltd., & Others v. M/s. Magnum Aviation Pvt. Ltd. & Another would submit that when there is no legally enforceable debt or other liability subsisting as on the date of the drawal of the cheque, there cannot be a criminal liability. The learned counsel would also submit that believing the words of the complainant that he would supply the coconuts, the accused issued a cheque in advance, since the complainant failed to supply the coconuts there was nothing for the accused to pay to the complainant and therefore though the cheque was issued, since there was no existence of liability a criminal liability cannot be fastened and as such, the learned Magistrate has rightly acquitted the accused.

6. Having heard both the learned counsel and on perusal of the material on record, the following points would arise for my consideration:--

"1. Whether the finding of the learned Magistrate that there is no presumption under Section 139 of N.I. Act as to the existence of liability is proper?

2. Whether the complainant has made out a case to interfere with the impugned judgment?"

7. The main reason for the learned Magistrate to acquit the accused is that the complainant failed to prove the existence of liability for the discharge of which the cheque in question was issued by the accused. What prompted the learned Magistrate to come to the said conclusion is the ratio laid down by the Supreme Court in Krishna Janardana Bhat's case reported in 2008 SCW 738 wherein the two judge bench of the Supreme Court has held that existence of legally recoverable debt is not a matter of presumption under Section 139 of N.I. Act. Section 139 of N.I. Act merely raises a presumption in favour of the holder of the cheque that the same has been issued for discharge of any debt or other liability. In other words, what has been held by the Supreme Court in Krishna Janardana Bhat's case is that the burden to prove the existence of legally recoverable debt is on the complainant and once the complainant discharged his burden, it is for the accused to lead a rebuttable evidence.

8. But in the subsequent three judge bench decision of the Supreme Court in a case of Rangappa Vs. Sri Mohan, AIR 2010 SC 1898 : (2010) 2 BC 693 : (2010) CriLJ 2871 : (2010) 5 JT 259 : (2010) 5 SCALE 340 : (2010) 11 SCC 441 : (2011) 1 SCC(Cri) 184 : (2010) 100 SCL 389 : (2010) AIRSCW 2946 : (2010) AIRSCW 6043 : (2011) AIRSCW 404 : (2010) 4 Supreme 169 : (2010) 5 Supreme 206 the Supreme Court overruled the ratio laid down in Krishna Janardana Bhat's case and laid down that the presumption mandated by Section 139 of N.I. Act includes a presumption that there exists a legally enforceable debt or liability and that it is a rebuttable presumption and it is open to the accused to raise the defence wherein the existence of a legally enforceable debt or liability can be contested. Therefore, it is in the light of the ratio laid down by the three judge bench decision of the Supreme Court in Rangappa's case, the case has to be decided. From the tenure of cross-examination to P.W. 1 and the evidence of the accused, it is obvious that the accused have admitted the issuance of a cheque in question marked as Ex. P32. But the case of the accused is that by believing the words of the complainant that he would supply the coconuts, the cheque was issued to the complainant in advance and since the complainant failed to supply the coconuts, the question of the liability to pay the amount shown under the cheque does not arise. Thus, the fact remains that the issuance of cheque is not in dispute. The signature on the cheque of the accused is also not in dispute. In reverse side of the cheque there is an endorsement "purchase of coconuts". Thus, from the evidence of the complainant coupled with the cheque and endorsement made thereon, it is established that the cheque was issued towards the payment of an amount of Rs. 2,70,000/- for having supplied the coconuts by the complainant to the accused. Even otherwise, it has to be presumed under Section 139 of the Act that the cheque was issued towards the existence of a legally enforceable debt or liability as held by the Supreme Court in Rangappa's case. Of course, it is a rebuttable presumption and it is for the accused to rebut the presumption. The defence of the accused is that though

the cheque was issued, the coconuts were not supplied and therefore there was no liability for the payment of the amount shown in the cheque. The learned counsel would also submit that when the complainant failed to supply the coconuts, the accused demanded the return of the cheque and when the complainant failed to return the cheque, the accused filed a complaint before the J.P. Nagar Police Station, Bangalore regarding the theft of the cheque and the police in turn summoned the complainant and recorded a statement of the complainant and the accused. The complainant in his statement before the police has agreed to return the cheque and thereafter presented the same for collection and instituted this case. It is needless to say at this juncture that the police have no business to deal in a matter pertaining to issuance of cheque. Whatever that has been stated before the police is not admissible in evidence. Even if the police officer who enquired into the petition came and gave evidence in support of the accused, that will not help the accused in any way in support of their defence. The decision relied upon by the learned counsel for the respondents/accused in a case of *M/s. Indus Airways Pvt. Ltd., & Others v. M/s. Magnum Aviation Pvt. Ltd. & Another* is of no assistance to the accused. In the said decision, the cheque was issued for advance payment in respect of purchase order, it was presented for collection after purchase order was cancelled before supply of the goods. It was held that the cheque was not drawn for the existing debt or liability and therefore the drawee of the cheque not liable under Section 138 of N.I. Act though the breach of condition of advance payment for purchase putting the seller to loss may create civil liability but not criminal liability. The facts of the case on hand are entirely different. The evidence discloses that the complainant did supply coconuts for the payment of which the cheque was issued which came to be dishonoured. Therefore, the said decision cannot be made applicable to the facts of this case.

9. Added to that, the accused purchased and issued cheques not only to the complainant but also to the brother of the complainant from whom they purchased the coconuts. The RTC extract produced and marked as Exs. P1 to P31 reveal that the complainant and his brother are the owner of as many as 31 survey numbers wherein the crop is shown as coconuts. That is sufficient to come to the conclusion that the complainant and his brother were growing coconuts in large quantity which they supplied to the accused. Though the accused led their evidence and that of their witnesses to rebut the presumption, the accused failed to rebut the presumption under Section 139 of N.I. Act in favour of the complainant. The fact remains that the accused had no money in their account when the cheque was presented. That itself goes to show that knowing fully well that there is no money in the account of the accused, the cheque in question came to be issued towards discharge of their liability. When the cheque was presented, it came to be dishonoured. Even after the dishonour of the cheque and demand for the cheque amount, the accused neither repaid the cheque amount nor gave reply to the demand notice and thereby they committed an offence under Section 138 of N.I. Act. The learned Magistrate

without understanding the scope of presumption under Section 139 of N.I. Act in its proper perspective and without analyzing the evidence properly, came to the wrong conclusion and acquitted the accused. Therefore, the impugned judgment is liable to be set aside. Accordingly, I pass the following

ORDER

The appeal is allowed. The judgment dated 20.03.2009 in C.C. No. 503/2001 on the file of the Principal J.M.F.C. at Honavar, is hereby set aside.

The respondents/accused Nos. 1 and 2 are convicted for an offence punishable under Section 138 of N.I. Act and have been sentenced to pay a fine of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only) each, in default to undergo simple imprisonment for a period of six months. In the event of deposit of fine amount, a sum of Rs. 2,90,000/- (Rupees Two Lakhs Ninety Thousand only) shall be paid to the complainant and the balance amount of Rs. 10,000/- (Rupees Ten Thousand only) shall be credited to the State Account.