C. KESHAVAMURTHY
v.
H.K. ABDUL ZABBAR
(Criminal Appeal No. 1026 of 2013)

JULY 23, 2013

[H.L. GOKHALE AND J. CHELAMESWAR, JJ.]

Negotiable Instruments Act, 1881 – ss. 138 and 139 – Dishonour of cheque – Complaint – Conviction by trial court and appellate court – Acquittal by revisional court – On appeal, held: Once the complaint case of cheque bouncing is prima facie established, the burden is on the accused to disprove the allegations – The accused in the instant case failed to disprove the allegation – Hence, order of conviction upheld.

Four cheques issued by respondents, in favour of the appellants were dishonoured. Appellant filed complaint u/s. 138 of Negotiable Instruments Act, 1881. Respondent took the plea that the cheques were issued in respect of some business transaction and the payments of the cheques were stopped by him by a notice. Trial court convicted the respondent not accepting his plea. Appellate Court confirmed the conviction. In revision, High Court acquitted him holding that the respondent had raised an acceptable defence. Hence the present appeal.

Allowing the appeal, the Court

HELD: The presumption under Section 139 of the Negotiable Instruments Act, 1881, includes the presumption of the existence at a legally enforceable debt or liability. That presumption is required to be honoured, and if it is not so done, the entire basis of making these

A **provisions will be lost. Therefore, it is for the accused to explain his case and defend it once the fact of cheque bouncing is prima facie established. The burden is on him to disprove the allegations once a *prima facie* case is made out by the Complainant. In the instant case, it has**
B **clearly come on record that disputed cheques were given subsequent to the Notice not to clear the earlier cheques. There was no explanation as to why the subsequent cheques could not have been cleared. The agreement on the basis of which the submission was**
C **made was not produced in the courts below. That being so, on facts there was no error on the part of the trial court as well as the appellate court in the view that they have taken. [Paras 9 and 11] [433-H; 434-A-B, E-F]**

Rangappa vs. Sri Mohan **2010 (11) SCC 441: 2010 (6)**
D **SCR 507 – relied on.**

Krishna Janardhan Bhat vs. Dattatraya G. Hegde **2008 (4) SCC 54: 2008 (1) SCR 605 – referred to.**

E **Case Law reference:**

2008 (1) SCR 605	**referred to**	**Para 7**
2010 (6) SCR 507	**relied no**	**Para 9**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
F No(s). 1026 of 2013.

From the Judgment and Order dated 08.12.2008 of the High Court of Karnataka at Bangalore in Crl R.P. No. 1295 of 2006.

G R.S. Hegde, Girish Anantmurthy, Chandra Prakash, Rajeev Singh, for the Appellant.

G.V. Chandrashekar, Anjana Chandrashekar for the Respondent.

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The Judgment of the Court was delivered by: A

H.L. GOKHALE, J. 1 Heard Mr. R.S. Hegde, learned counsel in support of this petition and Mr. G.V. Chandrashekhar, learned counsel appearing for the respondent.

2. Leave granted. B

3. Both the counsel have made their submissions.

4. The facts giving rise to this criminal appeal are as follows _ C

The respondent had issued four cheques to the appellant, which had bounced. Out of the five cheques, a cheque dated 31st July, 2003, was issued for an amount of ' 1,36,000/-, and three other cheques dated 10th August, 2003, 15th August, 2003 and 18th August, 2003, respectively were for a sum of ' D One lakh each. Since those cheques got bounced, the appellant filed a Complaint bearing No.2857 of 2003, in the Court of Judicial Magistrate, First Class-II, Davangere, in the State of Karnataka, under Section 138 of the Negotiable Instruments Act, 1881. The case of the appellant is that since these E cheques were dishonoured, an appropriate order under the law was necessary.

5. The defence of the respondent was that there was an agreement of sale between the parties, and that the F Complainant was a businessman dealing in lands, and it was in that transaction that the respondent had issued some cheques earlier, but since transaction did not fructify, he had issued a notice dated 28th July, 2003, not to clear those cheques. However, this defence could not be accepted for the G simple reason that all the cheques, which had bounced were issued subsequent to the said Notice dated 28th July, 2003. Therefore, no more justification was required for allowing the Complaint. The defence raised by the respondent could not be accepted and, therefore, the Learned Magistrate considered H

A the factual, as well as legal position and allowed the Complaint filed by the appellant herein.

6. The respondent being aggrieved therefrom filed a Criminal Appeal bearing No.51 of 2005, before the Additional B Sessions Judge, Fast Track Court-II, Davangere. The learned Judge framed necessary points for consideration, namely, whether the impugned judgment of conviction recorded by JMFC-II, Davangere, could not be sustained under law and whether the punishment was in any way disproportionate. The C learned Judge decided both those points in the negative, but passed an order whereby he partly allowed the appeal. The conviction recorded by the learned JMFC-II Court, Davangere, was confirmed, but the sentence was modified by him as follows:

D "The Accused/Appellant for the offence punishable under Section 138 of the Negotiable Instrument Act shall undergo simple imprisonment three months and pay fine of Rs.5,000/-. In default to pay such fine he shall undergo simple imprisonment for a further period of three months.

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The Accused/Appellant shall pay to the Complainant/ Respondent a sum of Rs.4,50,000/-(Four lakhs Fifty thousand) as compensation to the Complainant/ Respondent. In default to pay such compensation he shall undergo simple imprisonment for a further period of six F months. It was further directed that the Accused/Appellant shall pay the fine amount and also the compensation amount within 45 (forty five) days from this date and surrender before the J.M.F.C.-II Court, Davangere, to undergo the sentence. In case of failure to do so, the G Learned Magistrate shall take steps to enforce the sentence."

7. This judgment and order rendered by the Addl. Sessions Judge on 4th May, 2006, was carried by the respondent further H in Criminal Revision Petition No.1295 of 2006. This time,

however, the respondent was successful, and the plea raised by the respondent based on the Notice dated 28th July, 2003, was accepted by the learned Single Judge of the Karnataka High Court. The learned Single Judge referred to the judgment of a Bench of two Judges of this Court in *Krishna Janardhan Bhat Vs. Dattatraya G.Hegde,* reported in [2008(4)SCC 54], and stated that the burden is always on the Complainant to establish not only issuance of cheque, but existence of debt or legal liability. In the facts of this case, the learned Judge took the view that the respondent had raised an acceptable defence. He therefore, allowed the Revision and set aside the judgment rendered by the courts below. The accused respondent was acquitted of the offence under Section 138 of the Negotiable Instruments Act, 1888, and the amount deposited in court was directed to be refunded.

8. Being aggrieved by the judgment of the High Court dated 8th December, 2008, the present criminal appeal has been filed. Mr. R.S. Hegde, learned counsel for the appellant, submitted that the approach of the learned Judge was erroneous on facts, as well as on law. As noted above, though, the respondent had given some cheques earlier, and had issued a Notice dated 28th July, 2003 not to encash those cheques, the respondent had issued the disputed cheques thereafter. Therefore, the defence taken by the respondent that he had issued a Notice not to clear those cheques was not tenable on facts, and there was no defence as to why those cheques should not have been put into Bank and cleared.

9. Secondly, as far as the proposition canvased on the basis of the judgment in *Krishna Janardhan Bhat* (supra) is concerned, it must be noted that the same has been specifically held to be not a correct one in paragraph 26 of the judgment rendered by a three-Judge Bench in *Rangappa vs. Sri Mohan,* reported in [2010(11)SCC 441]. The judgment clearly held that the presumption under Section 139 of the Negotiable Instruments Act, 1881, includes the presumption of the

A existence at a legally enforceable debt or liability. That presumption is required to be honoured, and if it is not so done, the entire basis of making these provisions will be lost. Therefore, it has been held that it is for the accused to explain his case and defend it once the fact of cheque bouncing is B prima facie established. The burden is on him to disprove the allegations once a prima facie case is made out by the Complainant.

10. Mr. G.V. Chandrashekar, learned counsel for the respondent, on the other hand, submitted that in the facts of this C case, there was an agreement between the parties. He contended that although it is true that the agreement was not produced, but the fact of it was not disputed by the appellant himself. That being so, since the agreement was not being acted upon, the cheques were not expected to be cleared. He, D therefore, submitted that the order of the High Court was justified on the facts of the particular case.

11. We have noted the submissions of both the counsel. As noted earlier, it has clearly come on record that disputed E cheques were given subsequent to the Notice not to clear the earlier cheques. There was no explanation as to why the subsequent cheques could not have been cleared. The agreement on the basis of which the submission was made was not produced in the courts below. That being so, on facts there was no error on the part of the learned Magistrate, as well F as the learned Addl. Sessions Judge, in the view that they have taken. As far as the legal position is concerned, in our view, that has been settled adequately in *Rangappa's* case(supra), which has specifically explained the observations in Krishna *Janardhan Bhat* (supra).

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12. This being the position, we allow this appeal, set aside the order passed by the learned Judge of Karnataka High Court and restore the order passed by the Additional Sessions Judge. The parties will bear their own costs.

H K.K.T Appeal allowed.