

K. SUBRAMANI

v.

K. DAMODARA NAIDU

(Criminal Appeal No. 2402 of 2014)

NOVEMBER 13, 2014

[V. GOPALA GOWDA AND C. NAGAPPAN, JJ.]

Negotiable Instruments Act, 1881 - s.138 – Complaint under – Acquittal by trial court – High Court remanded the matter for retrial – Held: Trial court rightly acquitted the accused holding that the complainant failed to prove that there was legally recoverable debt payable to the accused – Therefore, order of High Court remanding the case for retrial is unsustainable.

Allowing the appeal, the Court

HELD: On a consideration of entire oral and documentary evidence the trial court came to the conclusion that the complainant had no source of income to lend a sum of Rs.14 lakhs to the accused and he failed to prove that there is legally recoverable debt payable by the accused to him. The said conclusion of the trial court has been arrived at on proper appreciation of material evidence on record. The impugned judgment of remand made by the High Court is unsustainable and liable to be set aside. [para 9-10] [173-F-H]

Rangappa vs. sri mohan 2010 (11) SCC 441: 2010 (6) SCR 507 – referred to.

Case Law Reference:

2010 (6) SCR 507 referred to Para 5

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 2402 of 2014.

B From the Judgment & Order dated 10.10.2013 of the High
Court of Karnataka at Bangalore in Cri. Appeal No. 368 of
2009.

Girish Ananthamurthy, Vijayanthi Girish for the Appellant.

Anand Sanjay M., Nuli & Nuli for the Respondent.

C The Judgment of the Court was delivered by

C. NAGAPPAN, J. 1. Leave granted.

D 2. This appeal is preferred against judgment and order
dated 10.10.2013 passed by the High Court of Karnataka at
Bangalore in Criminal Appeal No.368 of 2009 wherein the High
Court set aside the judgment of acquittal of the trial court and
remanded the case to the trial court for retrial.

E 3. The respondent herein/complainant and the appellant/
accused were working as lecturers in a Government College
at Bangalore. The case of the complainant is that the accused
borrowed a loan of Rs.14 lakhs in cash on 1.12.1997 from him
to start granite business, promising to repay the same with 3%
interest per month on demand and issued post-dated cheque
dated 30.11.2000 for sum of Rs.29,12,000/- which included
F principal and interest and few days prior to presentation of the
cheque on its due date to bank for encashment, the accused
requested him not to present the cheque and took extension
of time of another three years for repayment and finally issued
a cheque dated 16.08.2005 for a sum of Rs.73,83,552/- which
G included principal and interest. The complainant presented the
cheque on 19.8.2005 for encashment to his banker and it was
dishonored with an endorsement 'fund insufficient' and the
complainant issued legal notice on 12.9.2005 demanding
repayment within 15 days from the date of its receipt thereof
H and accused sent reply but failed to comply with the demand

and the complainant lodged complaint under Section 138 of the Negotiable Instrument Act, against the accused. A

4. In the trial the complainant examined himself as PW1 and examined CWs1 and 2 on his side and marked documents Exh. P1 to P23. The accused examined himself as DW1 and marked documents Exhs. D1 to D5. The trial court held that the complainant had no source of income to lend a sum of Rs.14 lakhs to the accused and he failed to prove that there is legally recoverable debt payable by the accused to him and that in discharge of said liability he issued the cheque and accordingly acquitted the accused for the alleged offence under Section 138 of N.I. Act. Aggrieved by the same the complainant preferred appeal in the High Court in Criminal Appeal No.368 of 2009, and the High Court heard the appeal along with 9 other appeals by framing two legal issues which are as under: B C D

" i) Whether an action under Section 138 of the N.I. Act for dishonor of cheque is the complainant required to establish his financial capacity to lend money?

ii) Will not presumption under Section 139 of the N.I. Act accrues to the benefit of the complainant unless the accused rebuts that presumption?" E

5. Relying on the ratio laid down by this Court in the decision in **Rangappa vs. Sri Mohan** [(2010) 11 SCC 441] the High Court answered the first issue in the negative and the second issue in the affirmative. It further held that the orders of acquittal recorded by the trial court in all the appeals suffer from legal infirmity as the prosecution has been undone only on the ground that complainant had not proved his capacity to lend money and hence those orders are liable to be set aside. Accordingly it allowed the appeals and set aside the respective judgments of acquittal and remanded the cases to courts concerned directing retrial. The present appeal is preferred challenging the said judgment. F G

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A 6. The learned counsel appearing for the appellant/
 respondent contended that the High Court erroneously clubbed
 a batch of 10 criminal appeals and formulated two questions
 of law and insofar as the present appeal is concerned the trial
 court never proceeded on the assumption that the presumption
 B under Section 139 of the N.I. Act would enure to the benefit of
 the complainant only if he proves his financial capacity and on
 the contrary the trial court had for reasons recorded found that
 the accused has rebutted the presumption by placing cogent
 evidence that there was no legally recoverable debt or liability
 C and the complainant had no capacity to lend huge amount of
 Rs.14 lakhs and, accordingly, dismissed the complaint by
 acquitting the accused. It is his further contention that the High
 Court without going into the merits proceeded to remand the
 present case to the trial court for being retried and it has
 D caused great prejudice to the appellant herein and hence the
 impugned judgment is liable to be set aside.

7. Learned counsel for the respondent/complainant
 submitted that the High Court answered the legal issues
 involved and has remanded the case to the trial court for fresh
 E consideration and no exception can be taken to the impugned
 judgment.

8. Three Judge Bench of this Court in the decision in
Rangappa case (supra) laid down that the presumption
 F mandated by Section 139 of the N.I. Act includes a presumption
 that there exists a legally enforceable debt or liability and that
 is a rebuttable presumption and it is open to the accused to
 raise a defence wherein the existence of a legally enforceable
 debt or liability can be contested. Relying on the said ratio the
 G High Court answered the two legal issues raised by it in the
 impugned judgment. Though the criminal appeals were
 preferred against the judgment of acquittal passed in all the
 cases arising under Section 138 of the N.I. Act, the factual
 matrix and the evidence adduced were different. The High
 H Court after answering the two legal issues did not consider the
 I

merits of each case individually and has simply remanded the matter to the trial court for fresh consideration.

9. In the present case the complainant and the accused were working as Lecturers in a Government college at the relevant time and the alleged loan of Rs.14 lakhs is claimed to have been paid by cash and it is disputed. Both of them were governed by the Government Servants' Conduct Rules which prescribes the mode of lending and borrowing. There is nothing on record to show that the prescribed mode was followed. The source claimed by the complainant is savings from his salary and an amount of Rs.5 lakhs derived by him from sale of site No.45 belonging to him. Neither in the complaint nor in the chief-examination of the complainant, there is any averment with regard to the sale price of site No.45. The concerned sale deed was also not produced. Though the complainant was an income-tax assessee he had admitted in his evidence that he had not shown the sale of site No.45 in his income-tax return. On the contrary the complainant has admitted in his evidence that in the year 1997 he had obtained a loan of Rs.1,49,205/- from L.I.C. It is pertinent to note that the alleged loan of Rs.14 lakhs is claimed to have been disbursed in the year 1997 to the accused. Further the complainant did not produce bank statement to substantiate his claim. The trial court took into account the testimony of the wife of the complaint in another criminal case arising under Section 138 of the N.I. Act in which she has stated that the present appellant/accused had not taken any loan from her husband. On a consideration of entire oral and documentary evidence the trial court came to the conclusion that the complainant had no source of income to lend a sum of Rs.14 lakhs to the accused and he failed to prove that there is legally recoverable debt payable by the accused to him.

10. In our view the said conclusion of the trial court has been arrived at on proper appreciation of material evidence on record. The impugned judgment of remand made by the High Court in this case is unsustainable and liable to be set aside.

A 11. In the result this appeal is allowed and the impugned judgment insofar as the appellant is concerned is set aside and the judgment of acquittal passed by the trial court is restored.

Kalpana K. Tripathy

Appeal allowed.