

RAMDAS S/O KHELUNAIK
v.
KRISHNANAND S/O VISHNU NAIK.
(Criminal Appeal No.1522 of 2014)

JULY 23, 2014

[RANJANA PRAKASH DESAI AND N.V. RAMANA, JJ.]

Negotiable Instruments Act, 1881 - s. 138 - Dishonour of cheque - On the ground of stop payment instruction by drawer of cheque - Complaint - Dismissed by trial court acquitting the accused-drawer of cheque - High Court convicted the accused - On appeal, held: The complainant failed to prove his case that the cheque for Rs. 5 lakhs was against hand-loan of Rs. 1 lakh seventy five thousand - While the accused proved that the cheque was drawn in relation to sale agreement with the complainant and the payment thereof was instructed to be stopped on failure of execution of sale agreement - Accused acquitted.

A cheques for Rs. 5 lakhs issued by the appellant-accused, in favour of the respondent was dishonoured by the Bank on the ground of 'Stop payment' instruction issued by the appellant. Thereupon, the respondent filed complaint u/s. 138 of Negotiable Instruments Act. The case of the complainant-respondent was that he had given a hand-loan of Rs. 1 lakh 75 thousand to the appellant, the appellant had drawn the cheques for Rs. 5 lakhs to discharge that liability. The case of the appellant was that he had entered into agreement with the complainant with regard to purchase of land for a total consideration of Rs. 10 lakhs and for that purpose a cash of Rs. 30,000/- and the cheque for Rs. 5 lakhs was handed over; and that he instructed the Bank to stop the payment, when the complainant failed to execute the sale

A agreement. Trial court dismissed the complaint and acquitted the appellant. In appeal, High Court found the appellant guilty and imposed sentence of fine of Rs. 8,50,000/- with default clause. Hence the present appeal.

B Allowing the appeal, the Court

HELD: 1. The Cheque in question was for Rs.5,00,000/- and all the way the stand of the complainant was that he had given a hand loan of Rs.1,75,000/- to the accused-appellant. There is no material on record in support of the claim of the complainant giving hand loan to the accused-appellant. There was also no calculation of account or stipulation of any interest on the alleged loan amount to show as to how the amount of Rs.5,00,000/- was figured, in return of a hand loan of Rs.1,75,000/-, if at all taken by the appellant from the complainant. It is also not on record whether there was sufficient balance amount or not in the bank account of the accused when the Cheque was dishonoured by the Bank. In the absence of any authenticated and supporting evidence, the Court cannot believe that the complainant-respondent who is employed under the appellant-accused, has raised an amount of Rs.1,75,000/- that too by obtaining loan of Rs.1,50,000/- from a Bank, only to give hand loan to his employer. As the complainant himself admitted that his net savings in a year comes to about Rs. 10,000/-, it is not trustworthy that he was in a position to extend hand loan of such big amount to the appellant. [Para 9] [946-G-H; 947-A-D]

2. On the other hand, the evidence of D.W. 2 fully corroborates the version of the appellant. He deposed that the talks of sale/purchase of 3 acres of land were held between the parties in his presence. The complainant has not rebutted the evidence of D.W. 2 in the cross examination. Further, the firm and unshaken

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evidence of DW6, a member of the Bar Association (D.W. 6) also corroborated the sale purchase deal between the parties. It is evident from the record that (DW 6) has clearly and categorically deposed that the appellant stated to him about four years back that he had entered into an agreement with the complainant in presence of DW 2 to purchase 3 acres of land belonging to the complainant and also paid Rs.30,000/- in cash as advance money and issued a Cheque for Rs.5,00,000/-. Looking at the corroborative evidence adduced by the defence witnesses and more particularly, in the absence of any material evidence in support of the claim of the respondent-complainant, the impugned judgment cannot be upheld. [Para 10] [947-E-H; 948-A-B]

CRIMINAL APPELLATE JURISDICTION : CRIMINAL APPEAL NO. 1522 of 2014.

From the Judgment and Order dated 22.08.2012 in CRLA No. 832/2007 of the High Court of Karnataka Circuit Bench at Dharwad.

Manjunath Meled, Anil Kumar for the Appellant.

Anish Kumar Gupta, Deep Shikha Bharati, R.D. Gupta for the Respondent.

The Judgment of the Court was delivered by

N.V. RAMANA, J. 1. Leave granted.

2. This appeal by special leave arises out of Judgment dated 22nd August, 2012 passed by the High Court of Karnataka, Circuit Bench at Dharwad, in Criminal Appeal No. 832 of 2007 whereby the High Court set aside the Judgment and Order of the J.M.F.C. (II-Court), Karwar acquitting the appellant herein of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act').

A 3. The facts leading to this appeal, in a nutshell, are that a
 B Cheque for Rs.5,00,000/- issued by the appellant in favour of
 the respondent was dishonoured by the Bank when it was
 presented for realization by the respondent, as the appellant
 had instructed the Bank to stop the payment. After receiving
 C such information from the Bank, the respondent served a legal
 notice calling upon the appellant to pay the Cheque amount.
 Upon failure of the respondent to obey the legal notice
 warranting him to pay the Cheque amount of Rs.5,00,000/-, the
 respondent filed Complaint Case against the appellant for the
 D offence punishable under Section 138 of the Act. The Judicial
 Magistrate (First Class), Karwar took cognizance of the
 offence, recorded statement of the complainant under oath,
 registered the case and summoned the accused-appellant. The
 appellant pleaded not guilty and claimed trial.

D 4. Before the Trial Court, the complainant-respondent solely
 led his own evidence as P.W. 1., whereas the appellant-
 accused in his defence led evidence of six witnesses. The case
 of the complainant was that he had given a hand loan of
 E Rs.1,50,000/- to the accused-appellant and three and half years
 thereafter he had again given Rs.25,000/- as hand loan, thus
 in all, the accused-appellant owed him Rs. 1,75,000/- and to
 discharge this liability the cheque for Rs.5,00,000/- was drawn,
 but the same stood dishonoured at the instructions of the
 accused-appellant. Whereas, the case of the appellant before
 F the Trial Court was that he had entered into an agreement with
 the complainant to purchase 3 acres of land belonging to the
 complainant for a total consideration of Rs.10,00,000/- and for
 that purpose, an advance of Rs.30,000/- in cash was paid and
 the Cheque in question for Rs.5,00,000/- was handed over to
 G the complainant in presence of B.S. Pai (DW 2). When the
 complainant failed to execute the sale agreement and not even
 willing to return the advance amount of Rs.30,000/- and the
 Cheque of Rs.5,00,000/-, he had to instruct the Bank to stop
 payment against the said Cheque.

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5. The Trial Court, taking note of financial condition of the complainant who was working under the accused, observed that the complainant has failed to lead any evidence to corroborate his version that the Cheque issued by the appellant was to discharge the liability towards the complainant. Keeping in mind the corroborative and unshaken defence version, the Trial Court found fault with the complainant-respondent and observed that instead of executing an agreement to sell and instead of repaying the advance money and returning the Cheque, a false complaint was filed by the complainant-respondent against the accused-appellant. The Trial Court, therefore, dismissed the complaint and acquitted the accused-appellant of the offence.

6. Against the judgment of the Trial Court dismissing the Complaint and acquitting the accused, the complainant preferred Criminal Appeal before the High Court. The High Court while allowing the appeal, set aside the judgment of the Trial Court and sentenced the appellant-accused to pay a fine of Rs.8,50,000/- within a period of eight weeks, failing which, to suffer simple imprisonment for a period of six months. Aggrieved by the reversal of his acquittal, the appellant-accused filed the present appeal.

7. Learned counsel for the appellant-accused contended that the Cheque in question was in fact issued as part payment of the agreed sale/purchase of 3 acres of land belonging to the complainant for a total consideration of Rs.10,00,000/-, out of which an initial amount of Rs.30,000/- was also paid by the appellant in cash and the complainant was supposed to execute a written sale agreement. As the complainant had not come forward for giving finality to the commitment by execution of written Sale Agreement and even denied to return the advance payment of Rs.30,000/- and the Cheque in question, the appellant had no option but to request his banker to not honour the Cheque. The complainant mischievously cooked up the story of giving hand loan to the appellant which the Trial

A Court had rightly disbelieved and dismissed the complaint. Although the complainant-respondent miserably failed to establish the fabricated story of giving hand loan to the appellant with any reliable evidence, the High Court took an erroneous view and wrongly set aside the judgment of the Trial Court and sentenced the appellant under Section 138 of the Act. Learned counsel, therefore, submitted that the impugned order is not justified and the same deserves to be set aside.

8. On the other hand, learned counsel for the respondent-complainant submitted that there was no error in the impugned judgment and the High Court has rightly allowed the appeal of the complainant. The complainant had raised a sum of Rs.1,50,000/- by obtaining loan from Akshya Bank to extend hand loan to the accused-appellant and 3½ years thereafter, a further sum of Rs.25,000/- was also given and the Cheque for Rs.5,00,000/- was meant for the total repayment of the advanced amount of Rs.1,75,000/-. He further submitted that there was no transaction of sale/purchase of land between the parties and the accused wanted to avoid repayment of the hand loan, in the process of which he instructed the banker not to pass the Cheque. The High Court has, therefore, correctly dealt with the matter and rightly sentenced the accused who, knowing fully the eventuality of the offence, committed the same deliberately. Hence the learned counsel prayed that the appeal lacks merit and the same deserves to be dismissed.

9. We have heard rival contentions of the learned counsel at length. We find from the record that admittedly, the accused appellant deals with sale and purchase of landed properties and the respondent-complainant works as a Lorry Driver under him with a salary of Rs.2,500/- p.m. and Rs.20/- per day towards miscellaneous expenses (*bhatta*). Admittedly, the Cheque in question was for Rs.5,00,000/- and all the way the stand of the complainant was that he had given a hand loan of Rs.1,75,000/- to the accused-appellant. We find no material on record in support of the claim of the complainant giving hand loan to the

accused-appellant. There was also no calculation of account or stipulation of any interest on the alleged loan amount to show as to how the amount of Rs.5,00,000/- was figured, in return of a hand loan of Rs.1,75,000/-, if at all taken by the appellant from the complainant. It is also not on record whether there was sufficient balance amount or not in the bank account of the accused when the Cheque was dishonoured by the Bank. The complainant himself stated in the cross-examination that after the Cheque was returned without payment, he has not made any enquiry with the Bank as to whether sufficient funds were available or not in the account of the accused. In the absence of any authenticated and supporting evidence, we cannot believe that the complainant-respondent who is employed under the appellant-accused, has raised an amount of Rs.1,75,000/- that too by obtaining loan of Rs.1,50,000/- from a Bank, only to give hand loan to his employer. As the complainant himself admitted that his net savings in a year comes to about Rs. 10,000/-, it is not trustworthy that he was in a position to extend hand loan of such big amount to the appellant.

10. Whereas, the evidence of Mr. B.S. Pai (D.W. 2) fully corroborates the version of the appellant. He deposed that the talks of sale/purchase of 3 acres of land were held between the parties in his presence. The appellant agreed to purchase 3 acres of land belonging to the complainant and the appellant had paid an amount of Rs.30,000/- as advance and handed over a Cheque for Rs.5,00,000/- . It is also noteworthy that the complainant has not rebutted the evidence of D.W. 2 in the cross examination. Further, the firm and unshaken evidence of Mr. D.R. Bhat, a member of the Karwar Bar Association (D.W. 6) also corroborates the sale purchase deal between the parties. It is evident from the record that DW 6 has clearly and categorically deposed that the appellant stated to him about four years back that he had entered into an agreement with the complainant in presence of B.S. Pai (DW 2) to purchase 3 acres of land belonging to the complainant and also paid

- A Rs.30,000/- in cash as advance money and issued a Cheque for Rs.5,00,000/-. Looking at the corroborative evidence adduced by the defence witnesses and more particularly, in the absence of any material evidence in support of the claim of the respondent-complainant, we cannot uphold the impugned judgment.
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11. For all the aforesaid reasons, the appeal deserves to be allowed and is accordingly allowed. The impugned judgment of the High Court is set aside and the judgment of the Trial Court is restored. The appellant is at liberty to withdraw the amount of Rs.1,75,000/- with accrued interest if any, deposited by him before the Trial Court in accordance with this Court's order dated 30th November, 2012.
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Kalpana K. Tripathy

Appeal allowed