

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR. JUSTICE S RACHAIAH

CRIMINAL REVISION PETITION NO. 841 OF 2020

BETWEEN:

RANGASWAMY

...PETITIONER

(BY SRI. HARISH BABU K N, ADVOCATE)

AND:

RAVI KUMAR

...RESPONDENT

(BY SRI. PRASANNA V R, HCGP)

THIS CRL.RP IS FILED U/S. 397 R/W 401 CR.P.C PRAYING TO SET ASIDE THE JUDGMENT DATED 04.07.2020 PASSED BY THE V ADDITIONAL DISTRICT AND SESSION JUDGE AT TIPTUR, IN CRL.A.NO.10028/2017 AND JUDGMENT DATED 30.08.2017 PASSED BY SENIOR CIVIL JUDGE AND J.M.F.C. AT TURUVEKERE IN C.C.NO.51/2016 AND ETC.,

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED ON 11.01.2024, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. This Criminal Revision Petition is filed by the petitioner, being aggrieved by the judgment of conviction and order of sentence dated 30.08.2017 in C.C.No.51/2016 on the file of the Court of the Civil Judge and JMFC at Turuvekere and the judgment and order dated 04.07.2020 in Crl.A.No.10028/2017 on the file of V Additional District and Sessions Judge, Tiptur seeking to set aside the concurrent findings recorded by the Courts below, wherein the petitioner / accused is convicted for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'NI Act').
2. The rank of the parties in the Trial Court henceforth will be considered accordingly for convenience.

Brief facts of the case:

3. The accused is said to have borrowed a sum of Rs.55,000/- in the month of September 2012 and agreed to repay the said amount to the complainant within six months. After six months, when the complainant demanded to repay the amount, the accused said to have issued a cheque for a sum of Rs.55,000/-. When the cheque was presented for encashment, it came to be

dischonoured with a shara as 'funds insufficient'. On 10.07.2013, the complainant issued a legal notice calling upon the accused to repay the said cheque amount. In spite of the notice having been served, the accused neither repaid the amount nor replied to the said notice. Hence, a complaint came to be registered by the complainant.

4. To prove the case of the complainant, the complainant examined himself as PW.1 and got marked six documents as Exs.D1 to D6. On the other hand, the accused examined himself as DW.1 and also got examined DW.2 and got marked two documents as Exs.D1 and D2. The Trial Court after appreciating the oral and documentary evidence on record, convicted the petitioner for the offence stated supra. Being aggrieved by the same, the petitioner preferred an appeal before the Appellate Court and the Appellate Court confirmed the judgment of conviction rendered by the Trial Court. Being aggrieved by the same, the petitioner has preferred this revision petition.
5. Heard Sri.Harish Babu K.N, learned counsel for the petitioner and Sri.Prasanna V.R, learned counsel for respondent.

6. It is the submission of the learned counsel for the petitioner that the Courts below grossly erred in not appreciating the fact and also failed to take note of non-service of notice which is required mandatorily in terms of Section 138(b) of the N.I Act.
7. It is further submitted that the respondent has failed to produce any document to show that he has advanced the loan to the accused. In spite of disproving the existence of a legally recoverable debt, the Trial Court recorded the conviction which requires to be set aside. Making such submission, the learned counsel for the petitioner prays to allow the petition.
8. Per contra, the learned counsel for the respondent justified the judgment of conviction passed by the Trial Court and its confirmation order by the Appellate Court and submitted that in spite of notice having been served to the accused regarding dishonour of cheque, he has not replied to the said notice. Though he has denied the transaction, the signature has not been disputed and admitted that the cheque belongs to him. In the absence of cogent evidence that the loan has not been advanced to him, it cannot be said that the loan transaction has not taken place. Mere denial of the transaction would not be

sufficient to rebut the presumption. Therefore, the Courts below have rightly held that the petitioner was found guilty of the offence stated supra. Therefore, the petition deserves to be dismissed. Having said thus, the learned counsel for the respondent prays to dismiss the petition.

9. Having heard the learned counsel for the respective parties and also perused the findings of the Courts below, it is relevant to advert to the facts of the case to ascertain as to whether any perversity or illegality in the findings recorded by the Courts below.
10. It is settled principle of law that the accused has to rebut the presumption by leading the cogent evidence to substantiate his case. Now it is relevant to refer to the evidence of DW.1. DW.1 contended that he was not aware about the complainant and no transaction had taken place between the complainant and himself. He further stated that he borrowed a sum of Rs.20,000/- from one Sri.Kantharaju by issuing two signed cheques. Even after clearing the loan, the said Sri.Kantharaju did not return the cheques. However, the son of the complainant namely Sri.Venkatesh presented one of the cheques and withdrew Rs.12,000/- from his account.

11. In the cross-examination, he has admitted the cheque and the signature, however, he states that the said cheque was issued to Sri.Kantharaju. Further, he states that Rs.12,000/- has been transferred to the joint account of Sri.Ravi Kumar who is the complainant herein and his son Sri.Venkatesh.
12. DW.2 who is the son of the complainant has stated in his evidence that the bank account mentioned by the accused stands in his personal name. He stated to have advanced amount of Rs.12,000/- and it was repaid to him through cheque by the complainant.
13. On careful reading of the evidence of DW.1, it is contended that he had issued a cheque to Sri.Kantharaju and those cheques have been misused by the complainant-Sri.Ravi kumar and DW.2-Sri.Venkatesh. However, the accused has failed to produce any documents, both oral and documentary, regarding those cheques were issued to Sri.Kantharaju. When the defence of the accused is not believable, inference can be drawn that he made a transaction with the complainant and issued cheque for the said transaction. As such, it is inferred that the findings of the Courts below in recording the conviction appears to be appropriate and there is no

occasion for this Court to interfere with the said findings.
Hence, this Revision Petition is liable to be dismissed.
Ordered accordingly.

**Sd/-
JUDGE**

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