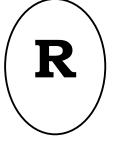


IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 15TH DAY OF DECEMBER, 2023
BEFORE
THE HON'BLE MR. JUSTICE S RACHAIAH
CRIMINAL APPEAL NO. 2104 OF 2018 (A)



BETWEEN:

SMT H B BHAGYALAKSHMI

(BY SRI. H B RUDRESH AND
SRI. P B AJIT, ADVOCATES)

...APPELLANT

AND:

SMT CHELUVAMMA

...RESPONDENT

(BY SRI. AMRUTHESH C, AMICUS CURIAE)

THIS CRL.A IS FILED U/S.378(4) OF CR.P.C PRAYING TO SETTING ASIDE THE IMPUGNED JUDGMENT DATED 26-10-2018 PASSED BY THE XII ADDITIONAL AND XXXVII A.C.M.M. (S.C.C.H-8) AT BENGALURU IN C.C.NO.25323/2017 ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCE P/U/S 138 OF THE N.I ACT.

THIS CRIMINAL APPEAL HAVING BEEN HEARD THROUGH PHYSICAL HEARING / VIDEO CONFERENCING HEARING AND RESERVED ON 03.10.2023 BEFORE THE PRINCIPAL BENCH AT BENGALURU BENCH, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, BEFORE THE DHARWAD BENCH, THROUGH VIDEO CONFERENCING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

1. This appeal is filed by the complainant/appellant being aggrieved by the judgment and order of acquittal dated 26.10.2018 passed in C.C.No.25323/2017 on the file of XII and XXXVII Additional Chief Metropolitan Magistrate (S.C.C.H-8), Bengaluru, wherein the Trial Court acquitted the accused/respondent for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'N.I. 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 complainant was working as a teacher and she knew the accused for several years. The accused in the month of July 2016 approached the complainant and requested the complainant to lend amount of Rs.2,50,000/- for her granddaughter's education and also for family necessities. The complainant agreed to pay the said amount. On 27.07.2016 and 08.11.2016, the complainant has paid Rs.30,000/- twice in the name of the daughter of the accused through cheques. Again on 08.11.2016, the

accused had requested to pay the amount of Rs.1,90,000/- by way of cash. Considering her request, the complainant has paid the said amount in the presence of Smt.Parvathi, Smt.Salma and Sri.Bommanathappa. The accused had promised the complainant that she would repay the amount as early as possible. However, even after lapse of almost one year, the amount was not refunded. Therefore, the complainant insisted the accused to repay the said amount. Then, the accused in the month of June 2017 issued a cheque and asked the complainant to present the same for encashment. When the said cheque was presented for encashment, it came to be dishonoured as "could not be proceeded due to alteration". The said endorsement has been received on 09.08.2017. The legal notice was issued on 05.09.2017 and the said notice came to be served on 08.09.2017. In spite of notice having been served, the accused has not paid the amount nor replied to the said notice. Hence, it constrained the complainant to lodge a complaint against the accused before the Jurisdictional Magistrate.

4. To prove the case of the complainant, the complainant examined herself as PW.1 and also got examined PW.2

and further got marked 10 documents as Exs.P1 to P10. On the other hand, the accused examined herself as DW.1 and got marked 13 documents as Exs.D1 to D13. The Trial Court after appreciating the oral and documentary evidence on record of both the parties, recorded the acquittal.

5. Heard Sri.H.B.Rudresh and Sri.P.B.Ajit, learned counsels for the appellant and Sri.Amruthesh.C, learned Amicus Curiae for the respondent.
6. It is the submission of the learned counsel for the appellant that the judgment and order of acquittal passed by the Trial Court is perverse and erroneous. Hence, the same is liable to be set aside.
7. It is further submitted that the Trial Court has come to the conclusion that cheque has been altered, however, Ex.P2 is an endorsement of the bank, in the said endorsement, there is no such averment. In the absence of such averment, the Trial Court recorded the acquittal on the same ground appears to be not proper and perverse.

8. It is further submitted that the amount of Rs.30,000/- was paid twice to the daughter of the accused by way of cheques and the remaining balance amount was paid in cash in the presence of PW.2 and two others. The evidence of PW.2 though inspired the confidence of the Court, the Trial Court failed to take note of the same and recorded the acquittal which is opposed to the evidence on record. Therefore, the judgment of acquittal passed by the Trial Court which is appeared to be improper and illegal and therefore, the same is liable to be set aside. Making such submission, the learned counsel for the appellant prays to allow the appeal.
9. Per contra, the learned Amicus Curiae for the respondent/ accused vehemently justified the concurrent findings and submitted that the accused had borrowed a sum of Rs.1,50,000/-. However, the complainant has materially altered the number '1' as '2' and presented it for encashment. Though the complainant filed a case against the daughter of the accused, the complainant has admitted that the amount which was given to the daughter of the accused is also included in the present cheque. The evidence of PW.2 is not sufficient to prove

the case of the complainant as she is not an eyewitness to the transaction.

10. It is further submitted that the Trial Court after appreciating the oral and documentary evidence on record, recorded the acquittal which is proper and relevant and the said findings require no interference. Making such submission, the learned Amicus Curiae for the accused/respondent prays to dismiss the appeal.
11. After having heard the learned counsel for the respective parties and also perused the findings of the Trial Court in recording the acquittal, the points which would arise for my consideration are:-
 - i. Whether the finding of the Trial Court in recording the acquittal of the accused for the offence punishable under Section 138 of N.I Act is justified?*
 - ii. Whether the appellant has made out grounds to interfere with the said findings?*
12. The Appellate Court has to interfere only where it is noticed the perversity or error committed by the Trial Court in recording the acquittal in a case of appeal against acquittal.

13. It is also necessary to refer to the preposition of law for better understanding in respect of the Negotiable Instrument Act. Now, it is relevant to refer to the judgment of the Hon'ble Supreme Court in the case of **BASALINGAPPA v. MUDIBASAPPA**¹, paragraph No.25 reads thus:

"25. We having noticed the ratio laid down by this Court in the above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:

25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record

¹ (2019) 5 SCC 418

by the parties but also by reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come in the witness box in support of his defence. Section 139 imposed an evidentiary burden and not a persuasive burden.

25.5. It is not necessary for the accused to come in the witness box to support his defence.”

14. On careful reading of the above said provision, it makes it clear that once the execution of the cheque is admitted, Section 139 of the N.I Act mandates the presumption that the cheque was issued for the discharge of any debt or other liability. The presumption is rebuttable presumption, the onus is on the accused to raise the probable defence. To rebut the presumption it is for the accused to rely on the evidence led by the complainant or the accused can also rely on the material submitted by the complainant in order to raise the probable defence. It is not necessary for the accused to enter into the witness box in support of his defence.
15. Having regard to the preposition of law stated supra, now it is relevant to advert to the facts of the case. The complainant said to have paid the amount of

Rs.2,50,000/- to the accused and the accused has agreed to repay the said amount within a short period. When the complainant insisted to repay the amount, the accused had issued a cheque for the said amount. When it was presented for encashment, the cheque came to be dishonoured and received a shara as "*could not be proceeded due to alteration in the cheque*". On the other hand, the accused led her evidence and vehemently contended that she had borrowed only Rs.1,50,000/- and the cheque was issued for the said amount. However, the complainant has materially altered the cheque and presented it for encashment. The Trial Court recorded the acquittal on the ground that the complainant has failed to prove that the accused had consented to alter the cheque.

16. Now, it is relevant to refer to the provision under Section 87 of the N.I Act which reads as under :

"87. Effect of material alteration.—*Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;*

Alteration by indorsee.—*And any such alteration, if made by an indorsee, discharges his indorser from*

all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 49, 86 and 125."

17. On careful reading of the above said provision it makes it clear that any material alteration of a negotiable instrument renders the same void as against any person who is a party thereto at the time of making such alteration and does not consent thereto. DW.1 in her evidence has stated that she has borrowed Rs.1,50,000/- from the complainant and Smt.Kashibai was standing as surety for the said amount. The said Smt.Kashibai insisted the accused/DW.1 to repay the loan to the complainant. As per her instruction, the accused said to have paid Rs.1,25,000/-. The accused had to pay the balance and intimated the complainant to return the cheque and also informed the complainant that the balance would be paid at the time of returning the documents.
18. It is the contention of the accused / DW.1 that instead of returning the cheque and On Demand Promissory Note, the complainant has filled On Demand Promissory Note

and filed a suit for recovery and obtained decree. In the meantime, the complainant has also filled the cheque for Rs.2,50,000/- and presented it for encashment. After the cheque got dishonoured, the complainant filed the case in order to gain the amount wrongfully. To substantiate her contention, the accused has not got examined Smt.Kashibai and not produced any document to show that she has paid the entire amount.

19. When the accused herself has admitted that she has issued signed blank cheque to the complainant, it cannot be said that the body of the cheque is materially altered. Now, it is relevant to refer to the provision under Section 20 of the N.I Act which reads thus:

"20. Inchoate stamped instruments.—Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in [India], and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the

person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

20. On reading of the above said provision, it makes it clear that where one person signs and delivers to another a paper stamped in accordance with law relating to negotiable instruments either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. Once the authority is given to the complainant, it cannot be said that it is materially altered. The endorsement issued by the bank in this regard appears to be erroneous and not acceptable.
21. Even every negotiable instrument, On Demand Promissory Note or Bills of Exchange or cheque issued by the endorsee signed the blank, it gives authority to the holder of the bills of exchange or cheque to fill up the same not exceeding the amount covered by the stamp. In the present case, the complainant has stated that she

has paid Rs.2,50,000/- to the accused and also further stated that to clear the loan, the accused has issued a cheque. On the other hand, the accused has admitted that she has issued blank cheque and also further stated that the amount of Rs.1,50,000/- was filled by the complainant in her presence and subsequently, number '1' has been changed to number '2' and made it as Rs.2,50,000/-. However, on careful perusal of Ex.P1 – cheque, it appears that the amount mentioned in the number might be seen as altered, however, the amount mentioned in the word is not altered. Therefore, it cannot be said that the cheque is materially altered in respect of the amount.

22. On conjoint reading of Sections 20 and 87 of the N.I Act, it makes it clear that the provision of Section 87 are subject to those of Sections 20, 49, 86 and 125 of the Act. When the accused / drawer of the cheque signed the cheque and issued blank cheque to the complainant, if any alteration appears on the body of the cheque, such alterations need not require the consent of the accused / drawer of the cheque. In this way, the Trial Court has committed error in recording the acquittal on the ground

that the cheque is materially altered. Therefore, the judgment and order of acquittal passed by the Trial Court is liable to be set aside.

23. In the light of the observations made above, the points that arose for my consideration are answered as under:-

Point No.(i) - in the "Negative"

Point No.(ii) - in the "Affirmative"

24. Hence, I proceed to pass the following:-

ORDER

- i) The Criminal Appeal is allowed.
- ii) The judgment and order dated 26.10.2018 passed in C.C.No.25323/2017 by the XII and XXXVII Additional Chief Metropolitan Magistrate (S.C.C.H-8) at Bengaluru is set aside.
- iii) The respondent / accused is convicted for the offence under Section 138 of N.I. Act and she is sentenced to pay a fine of Rs.3,00,000/- (Rupees Three lakhs only), in default of payment of fine, she shall undergo simple imprisonment for one year.

- iv) On deposit of fine amount, it is ordered that amount of Rs.2,90,000/- (Rupees Two lakhs ninety thousand only) to be payable to the complainant/appellant as compensation in terms of Section 357-A of the Code of Criminal Procedure and the balance of Rs.10,000/- (Rupees Ten thousand only) to be adjusted to the exchequer of the State.
- v) The Registry is directed to send the record along with the copy of the judgment to the Trial Court forthwith.
- vi) The Trial Court is directed to secure the presence of the accused for execution of sentence imposed by this Court in accordance with law.
- vii) The services rendered by the learned Amicus Curiae are appreciated. The appreciation is taken on record.

**Sd/-
JUDGE**