

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 09TH DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE S RACHAIAH

CRIMINAL APPEAL NO. 610 OF 2011 (A)

BETWEEN:

SMT MANIMALA @ ROOPA
WIFE OF MR. H S LOKESH
AGED ABOUT 34 YEARS
NO.247, HOODI VILLAGE
K R PURAM HOBLI
BANGALORE EAST TALUK

...APPELLANT

(BY SRI. K G SADASHIVAIAH, ADVOCATE)

AND:

SRI K SATISH KUMAR
SON OF LATE SRI KRISHNAPPA
AGED ABOUT 57 YEARS
NO.4, 3RD FLOOR
SHIRADI SAI KRUPA COOMPLEX
NAGAPPA STREET
SHESHADRIPURAM
BANGALORE - 560 020.

...RESPONDENT

(BY SRI. MANMOHAN P N, ADVOCATE)

THIS CRL.A FILED U/S.378(4) OF CR.P.C PRAYING TO SET ASIDE JUDGMENT DATED 20.04.2011 (10TH IS OVER WRITTEN AS 20TH) IN CRIMINAL APPEAL NO.25057/2010 ON THE FILE OF THE ADDITIONAL SESSIONS JUDGE AND P.O. FTC III MAYO HALL UNIT, BANGALORE AND ETC.,

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED ON 23.08.2023, 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 appellant-complainant being aggrieved by the judgment and order of acquittal dated 20.04.2011 passed in CrI.A.No.25057/2010 on the file of Additional Sessions Judge and P.O. FTC.III, Mayo Hall Unit, Bengaluru wherein, the Appellate Court acquitted the respondent/accused 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. Sri.H.V.Venkatappa Reddy, the grandfather of the complainant had five children viz., Sri.Krishna Murthy Reddy, Sri.Nagaraja Reddy, Sri.Kodanda Rama Reddy, Smt.Dhanalakshmi and Smt.Padmavathy. The marriage of Smt.Padmavathy was performed with Sri.Jaya Rama Reddy who was working in HAL and presently resident of Marthahalli. Due to the said wedlock, the complainant and Smt.Aruna were born. Smt.Dhanalakshmi, mother of the complainant had

passed away when the complainant was aged about four years and Smt.Aruna was aged about two years. After the death of Smt.Dhanalakshmi, the complainant and Smt.Aruna were members of the joint family of Sri.H.V.Venkatappa Reddy. The complainant stated to have entitled for 1/12th share in the properties of Sri.H.V.Venkatappa Reddy. The complainant demanded her share in the property and also insisted the coparcener to effect the partition in the joint family properties.

4. When the partition was not effected, the complainant filed civil suit for partition. The matter was compromised. Accordingly, the share of the complainant was fixed. As per the said compromise, the amount of Rs.30.00 lakhs was to be paid along with six sites measuring 40 x 60 feet in the ancestral property to the complainant. The accused issued three cheques as a security. Two cheques of Rs.5.00 lakhs each and another cheque for a sum of Rs.20.00 lakhs drawn on Dhanalakshmi Bank Limited, M.G.Road Branch, Bengaluru were issued to the complainant. When those cheques were presented for encashment, it was dishonoured as 'funds insufficient'. After issuance of the statutory notice, when

the amount was not repaid, a complaint came to be filed before the jurisdictional Magistrate.

5. To prove the case of the complainant, the complainant examined herself as PW.1 and got marked 25 documents as Ex.P1 to Ex.P25. On the other hand, the accused got marked five documents as Ex.D1 to Ex.D5. The Trial Court after appreciating the oral and documentary evidence on record, opined that the complainant has proved the guilt of the accused and recorded the conviction. Being aggrieved by the same, an appeal was filed. In the said appeal, the judgment of conviction and order of sentence passed by the Trial Court was set aside on the ground that the entire transaction pertains to a civil dispute. Unless and until the complainant proves that she had a right over the property purchased by the accused, the amount mentioned in the cheques was not liable to be paid. Therefore, this appeal is filed by the complainant.

6. Heard Sri.K.G.Sadashivaiah, learned counsel for the appellant and Sri.Manmohan P.N, learned counsel for the respondent.

7. It is the submission of learned counsel for the appellant that the findings recorded by the Appellate Court in acquitting the accused is erroneous, perverse and illegal and the same is requires to be set-aside.

8. It is further submitted that the Appellate Court failed to consider the evidence on record and also failed to consider the documents in respect of the transaction and recorded the acquittal by setting aside the judgment and order of conviction passed by the Trial Court which requires to be set aside.

9. It is further submitted that the Appellate Court failed to take note of, the accused has not replied the legal notice even after receipt of the same and also not entered into witness box to rebut the presumption by leading. Unless the presumption is rebutted, the consideration in respect of the cheques would not have been denied. However, the Appellate Court has not taken note of this aspect and recorded the acquittal which is perverse, illegal and the same is liable to be set aside.

10. It is further submitted that the complainant filed suit in O.S No.1333/2004 claiming her share in respect of joint family properties including Sy.No.34/4 of Junnasandra Village, Varthur Hobli, Bengaluru East Taluk which is the subject matter of issuance of the cheques. The said survey number said to have purchased by the accused in the name of the company M/s.Shalini Resorts and Hotels Ltd. The accused issued those three cheques in his personal capacity and induced the complainant to record the compromise. Accordingly, memo dated 20.02.2006 was filed before the Civil Court and consequently, the suit was ended in compromise. Ex.P15 is the certified copy of the order sheet pertaining to O.S No.1333/2004 and the order dated 22.02.2006 indicates the suit was dismissed as withdrawn.

11. It is further submitted that once the execution of the cheques and signatures are admitted, the presumption raises in respect of consideration. However, the Appellate Court has failed to take note of the said presumption and also failed to appreciate the evidence on record properly, recorded the acquittal which is required to be set aside.

12. The learned counsel for the appellant relied on the following judgments to support his contention:

1. M/S ELECTRONICS TRADE AND TECHNOLOGY DEVELOPMENT CORPN LTD SECUNDERBAD V/S M/S INDIAN TECHNOLOGISTS AND ENGINEERS (ELECTRONICS) PVT LTD AND ANOTHER¹.
2. M/S DALMIA CEMENT (BHARATH) LTD V/S M/S GALAXY TRADERS AND AGENCIES LTD.²
3. ROHITBHAI JIVALALA PATEL V/S STATE OF GUJARAT AND ANOTHER³.
4. HITEN. P. DALAL V/S BRATINDRANATH BANERJEE⁴.
5. VIJAY V/S LAXMAN AND ANOTHER⁵.
6. SRIPATH SINGH (SINCE DECEASED) THROUGH HIS SON GAURAV SINGH V/S THE STATE OF JARKHAND AND ANOTHER⁶.

Making such submission, the learned counsel for the appellant prays to allow the appeal.

13. Per contra, the learned counsel for the respondent justified the judgment and order of acquittal passed by the Trial Court and submitted that the suit filed by the complainant against the family members in O.S No.1333/2004 was in respect of certain joint family properties mentioned in the said suit. As per Ex.D3, a memo was filed before the Civil Court to

¹ (1996)AIR (SC)2339

² (2001) AIR (SC) 676

³ (2019) AIR (SC) 1876

⁴ (2001) AIR (SC) 3897

⁵ (2013) 3 SCC 86

⁶ (2021) AIR (SC) 5732

withdraw the suit. The said suit came to be dismissed as withdrawn. The accused had purchased the property in the name of M/s.Shalini Resorts and Hotels Limited bearing Sy.no.34/4 of Junnasandra Village measuring 3 acres from its vendors namely Sri.H.V.Venkatappa Reddy, Sri.V.Krishnamurthy, Sri.V.Nagaraj and Sri.Kodandaram on 26.10.2005.

14. It is further submitted that the liability in respect of the cheques in dispute are not proved by the complainant before the Trial Court. The cheques which were issued to Sri.H.V.Venkatappa Reddy at the time of transaction in respect of the immovable property were misused by the complainant and presented it for encashment. Therefore, the Trial Court rightly appreciated both oral and documentary evidence on record and concluded that the complainant has failed to prove the case beyond all reasonable doubt. The reasons assigned by the Trial Court are appropriate and proper and interference with the said reasons may not be warranted. Making such submission, the learned counsel for the respondent prays to dismiss the appeal.

15. Having heard the learned counsel for the respective parties and perused the documents on record, it is relevant to

take note of the legal proposition in respect of the Negotiable Instruments Act especially on cheque bounce cases. It is settled principle of law that there is a presumption under Section 139 of the N.I. Act which protects the drawee from being to be deceived by the drawer of the cheque. Section 139 of the N.I Act says that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 of N.I. Act for the discharge, in whole, or in part of any debt or liability. It is settled principle of law that once the ingredients of Section 138 of the N.I Act are proved, the mandatory presumption are required to be raised. In such cases, the burden lies on the accused to rebut the presumption by leading cogent evidence.

16. Considering the proposition of law, let me analyse the contention of DW.1. The accused cross-examined PW.1 and contended that he was not party to the suit, however, the complainant admitted that she has not made the accused as a necessary party or proper party to the proceedings. Further, PW.1 admitted in her cross-examination that she was not informed regarding the share over the property either by her grandfather or by her maternal uncle. It is also admitted that neither her grandfather nor her maternal uncle has promised

her to give Rs.30.00 lakhs or six sites. On considering the admission of PW.1, in the cross-examination and also the contention of the accused in the cross-examination, it appears that the cheques said to have been issued as a security in respect of the sale transaction of property bearing Sy.no.34/4 of Junnasandra Village with Sri.H.V.Venkatappa Reddy and the cheques have been misused by the complainant.

17. The accused has conducted cross-examination and elicited that the method in which the cheques were issued. It is an admitted fact that the accused had purchased property bearing Sy.no.34/4 of Junnasandra Village in the name of M/s.Shalini Resorts and Hotels Ltd. Once the presumption is rebutted, the burden would be shifted to the complainant to prove as to whether she is liable to be paid the amount stated in the cheques.

18. When PW.1 has admitted in her evidence that either his grandfather or his maternal uncle are not promised her to effect the partition in respect of property bearing Sy.no.34/4, and more over the accused herein was not a party to the civil proceedings which was filed for partition by the complainant, the liability in respect of the said cheques would not arise. Thus, the findings of the Appellate Court in recording the

acquittal by setting aside the judgment of conviction and order of sentence appears to be appropriate and proper, there is no occasion for this Court to interfere with the said findings.

19. In the light of the observations made above, I proceed to pass the following:-

ORDER

The criminal appeal is dismissed.

**Sd/-
JUDGE**

UN
List No.: 1 Sl No.: 26