

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 25TH DAY OF AUGUST, 2011

BEFORE:

THE HON'BLE MR. JUSTICE A.S. PACHHAPURE

CRIMINAL APPEAL No.1012 OF 2008

BETWEEN:

M.N. Krishnamurthy,
S/O. V.D. Nataraj,
Major,
R/o. No.13/1,
4th Cross, 7th Main,
Srirampuram, Bangalore - 21. ... APPELLANT/S

[By Sri. B.S. Hadimani, Adv.]

AND:

N. Narasimhamurthy,
S/o. Ugre Gowda,
Major,
R/o. No.21/1,
Yamunabai Road,
Madhavanagar,
Bangalore - 01. ... RESPONDENT/S

[By Sri. C.V. Annaiah, Adv.]

This Crl.A. is filed u/Section 378(4) Cr.P.C praying to set aside the Order dt. 1.8.08 in C.C. No.29947/05 passed by the XVI Addl. C.M.M Bangalore - acquitting the respondent/accused for the offence punishable under Section 138 of N.I Act.

This Crl.A. coming on for Final Hearing, this day, the Court delivered the following

JUDGMENT

The appellant has challenged the acquittal of the respondent for the charge under Section 138 of the Negotiable Instruments Act [hereinafter called as "N.I. Act" for short] on a trial held by the Addl. Chief Metropolitan Magistrate, Bangalore City.

2. The facts relevant for the purpose of this appeal are as under:

The appellant is the complainant, whereas the respondent is the accused before the trial Court. The appellant is said to have advanced a hand loan of ₹3,00,000-00 to the respondent and in turn the respondent had executed two on demand promissory notes dated 09.06.2004 agreeing to repay the same with interest at 2% p.m. The respondent has also issued a stamped voucher dated 09.06.2004 having received the sum of ₹3,00,000-00.

The accused issued a cheque dated 30.06.2005 for a sum of ₹3,00,000-00 drawn on Sree Thyagaraja Co-operative Bank Limited, Bangalore. The cheque was presented for encashment on 30.06.2005. It



returned with endorsement of "insufficient funds". The appellant issued a notice dated 09.07.2005 and the said notice though served was not complied. In the circumstances, the appellant submitted his complaint before the trial Court to initiate action against the respondent for the charge under Section 138 of the N.I. Act.

During the trial, the complainant examined himself as P.W.1, a witness P.W.2 and got marked the documents Exs.P1 to 11. The statement of the respondent was recorded under Section 313 Cr.P.C. He has taken the defence of total denial. He himself examined as D.W.1 and got marked the documents Exs.D1 to 3. The trial Court after hearing the learned counsel for the parties and on appreciation of the material on record, acquitted the respondent for the charge aforesaid. Aggrieved by the order of acquittal, the present appeal has been filed.


3. I have heard the learned counsel for the appellant. The learned counsel for the respondent though served is absent.



4. The point that arises for my consideration is;

Whether the appellant has made out any grounds to warrant interference in the order of acquittal for the charge under Section 138 of the N.I. Act?

5. Ex.P8 is the demand promissory note and Ex.P10 is the consideration receipt for an amount of ₹1,50,000-00, dated 09.06.2004. Ex.P9 is another demand promissory note and Ex.P11 is another consideration receipt dated 09.06.2004, having received an amount of ₹1,50,000-00. Thereby, the appellant is said to have advanced a sum of ₹3,00,000-00 to the respondent on 09.06.2004. If really, an amount of ₹3,00,000-00 is to be advanced as loan to the respondent, there is no necessity to have two demand promissory notes and two consideration receipts for ₹1,50,000-00 each. There is no explanation by the appellant as to why these 4 documents were executed for a single loan transaction of ₹3,00,000-00 and therefore, a serious doubt arises with regard to genuineness of the transaction.



6. The contents of the demand promissory notes and consideration receipts are in black ink, whereas the signature of the respondent on these documents are in blue ink. If the respondent had executed two on demand promissory notes and two consideration receipts, only one pen could have been used to fill in the contents and also to put the signatures on the demand promissory notes and consideration receipts.

7. Furthermore, as could be seen from the cheque-Ex.P2, the contents of the cheque and the signatures of the respondent on it are in different handwriting and different ink. It is in the evidence of P.W.2 it is stated that the respondent himself filled the contents of the cheque and signed the same in his presence. If really the respondent had filled the cheque and signed the cheque in the presence of P.W.2, there was no necessity for the respondent to use two different pens i.e., one for filling up the contents of the cheque and another for putting the signature. So, even this document Exs.P2 creates serious doubt with regard to the alleged transaction. From these circumstances, it



could be inferred that the cheque, on demand promissory notes and consideration receipts were blank, signed by the respondent and subsequently they have been filled up. If this inference is once drawn, the evidence of P.Ws.1 and 2 goes contrary to the inference drawn and thereby the appellant fails to discharge the initial burden to raise presumption under Section 139 of the N.I. Act.

8. It is the defence of the respondent that he had taken the loan from P.W.2 and as a security, he had given blank demand promissory notes, consideration receipts and cheque signed by him to P.W.2, who is staying in his room at a lodge owned by P.W.1 and that though the amount was paid by the respondent to P.W.2, the complainant in collusion with P.W.2 has created a fictitious document to lodge a complaint for the offence punishable under Section 138 of the N.I. Act.

9. D.W.1 has entered the witness box and states about the receipt of loan from P.W.2 and he has also issued a notice dated 25.06.2005 at Ex.D1 to P.W.2 about the loan amount having been received and the cheque and other blank documents signed



having not been returned. Ex.D3 is said to be the receipt executed by P.W.2 towards payment of ₹1,00,000-00 by the respondent on 14.03.2004. P.W.2 has denied the signature on Ex.D3 and also the receipt of notice Ex.D1. In fact, the respondent has not produced any such documents to support his version having been issued the notice either by post or otherwise and there is no endorsement of P.W.2 having received the notice Ex.D1. But, anyhow, the circumstances stated supra raised a serious doubt with regard to the genuineness of the transaction.

10. Furthermore, the appellant has not produced any document to show his financial capacity and also to establish that he was having cash amount of ₹3,00,000-00 on the date when the transaction is alleged to have taken place. So, this is also a circumstance, which leads to a serious doubt with regard to the alleged transaction.

11. It is an appeal against the acquittal. The appellate Court will be slow in interfering with the order of acquittal. Even if a second view is possible, the one accepted by the trial Court cannot be disturbed. In the context of the principles, if



the evidence led by the parties is reappreciated, I do not find any justifiable grounds to warrant interference in the order of acquittal. In that view of the matter, I answer the point in negative and proceed to pass the following:

ORDER

The appeal is dismissed.

Sd/-
JUDGE

Ksm*