

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2402 OF 2014

[Arising out of SLP (Crl.) No.6197 of 2014]

K. Subramani

...

Appellant(s)**versus****K. Damodara Naidu**

...

Respondent(s)**J U D G M E N T****C. NAGAPPAN, J.**

1. Leave granted.

2. This appeal is preferred against judgment and order dated 10.10.2013 passed by the High Court of Karnataka at Bangalore in Criminal Appeal No.368 of 2009 wherein the

High Court set aside the judgment of acquittal of the trial court and remanded the case to the trial court for retrial.

2

3. The respondent herein/complainant and the appellant/accused were working as lecturers in a Government College at Bangalore. The case of the complainant is that the accused borrowed a loan of Rs.14 lakhs in cash on 1.12.1997 from him to start granite business, promising to repay the same with 3% interest per month on demand and issued post-dated cheque dated 30.11.2000 for sum of Rs.29,12,000/- which included principal and interest and few days prior to presentation of the cheque on its due date to bank for encashment, the accused requested him not to present the cheque and took extension of time of another three years for repayment and finally issued a cheque dated 16.08.2005 for a sum of Rs.73,83,552/- which included principal and interest. The complainant presented the cheque on 19.8.2005 for

encashment to his banker and it was dishonored with an endorsement 'fund insufficient' and the complainant issued legal notice on 12.9.2005 demanding repayment within 15 days from the date of its receipt thereof and accused sent reply but failed to comply with the demand and the complainant lodged complaint under Section 138 of the Negotiable Instrument Act, against the accused.

4. In the trial the complainant examined himself as PW1 and examined CWs1 and 2 on his side and marked documents Exh. P1 to P23. The accused examined himself as DW1 and marked documents Exhs. D1 to D5. The trial court held that the complainant had no source of income to lend a sum of Rs.14 lakhs to the accused and he failed to prove that there is legally recoverable debt payable by the accused to him and that in discharge of said liability he issued the cheque and accordingly acquitted the accused for the alleged offence under Section 138 of N.I. Act. Aggrieved

by the same the complainant preferred appeal in the High Court in Criminal Appeal No.368 of 2009, and the High Court heard the appeal along with 9 other appeals by framing two legal issues which are as under:

- “ i) Whether an action under Section 138 of the N.I. Act for dishonor of cheque is the complainant required to establish his financial capacity to lend money?
- ii) Will not presumption under Section 139 of the N.I. Act accrues to the benefit of the complainant unless the accused rebuts that presumption?”

5. Relying on the ratio laid down by this Court in the decision in **Rangappa vs. Sri Mohan** [(2010) 11 SCC 441] the High Court answered the first issue in the negative and the second issue in the affirmative. It further held that the orders of acquittal recorded by the trial court in all the appeals suffer from legal infirmity as the prosecution has

been undone only on the ground that complainant had not proved his capacity to lend money and hence those orders are liable to be set aside. Accordingly it allowed the appeals and set aside the respective judgments of acquittal and remanded the cases to courts concerned directing retrial. The present appeal is preferred challenging the said judgment.

6. The learned counsel appearing for the appellant/respondent contended that the High Court erroneously clubbed a batch of 10 criminal appeals and formulated two questions of law and insofar as the present appeal is concerned the trial court never proceeded on the assumption that the presumption under Section 139 of the N.I. Act would enure to the benefit of the complainant only if he proves his financial capacity and on the contrary the trial court had for reasons recorded found that the accused has

rebutted the presumption by placing cogent evidence that there was no legally recoverable debt or liability and the complainant had no capacity to lend huge amount of Rs.14 lakhs and, accordingly, dismissed the complaint by acquitting the accused. It is his further contention that the High Court without going into the merits proceeded to remand the present case to the trial court for being retried and it has caused great prejudice to the appellant herein and hence the impugned judgment is liable to be set aside.

7. Learned counsel for the respondent/complainant submitted that the High Court answered the legal issues involved and has remanded the case to the trial court for fresh consideration and no exception can be taken to the impugned judgment.

8. Three Judge Bench of this Court in the decision in **Rangappa** case (supra) laid down that the presumption

mandated by Section 139 of the N.I. Act includes a presumption that there exists a legally enforceable debt or liability and that is a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. Relying on the said ratio the High Court answered the two legal issues raised by it in the impugned judgment. Though the criminal appeals were preferred against the judgment of acquittal passed in all the cases arising under Section 138 of the N.I. Act, the factual matrix and the evidence adduced were different. The High Court after answering the two legal issues did not consider the merits of each case individually and has simply remanded the matter to the trial court for fresh consideration.

9. In the present case the complainant and the accused were working as Lecturers in a Government college at the

relevant time and the alleged loan of Rs.14 lakhs is claimed to have been paid by cash and it is disputed. Both of them were governed by the Government Servants' Conduct Rules which prescribes the mode of lending and borrowing. There is nothing on record to show that the prescribed mode was followed. The source claimed by the complainant is savings from his salary and an amount of Rs.5 lakhs derived by him from sale of site No.45 belonging to him. Neither in the complaint nor in the chief-examination of the complainant, there is any averment with regard to the sale price of site No.45. The concerned sale deed was also not produced. Though the complainant was an income-tax assessee he had admitted in his evidence that he had not shown the sale of site No.45 in his income-tax return. On the contrary the complainant has admitted in his evidence that in the year 1997 he had obtained a loan of Rs.1,49,205/- from L.I.C. It is pertinent to note that the alleged loan of Rs.14 lakhs is claimed to have been disbursed in the year

1997 to the accused. Further the complainant did not produce bank statement to substantiate his claim. The trial court took into account the testimony of the wife of the complainant in another criminal case arising under Section 138 of the N.I. Act in which she has stated that the present appellant/accused had not taken any loan from her husband. On a consideration of entire oral and documentary evidence the trial court came to the conclusion that the complainant had no source of income to lend a sum of Rs.14 lakhs to the accused and he failed to prove that there is legally recoverable debt payable by the accused to him.

JUDGMENT

10. In our view the said conclusion of the trial court has been arrived at on proper appreciation of material evidence on record. The impugned judgment of remand made by the High Court in this case is unsustainable and liable to be set aside.

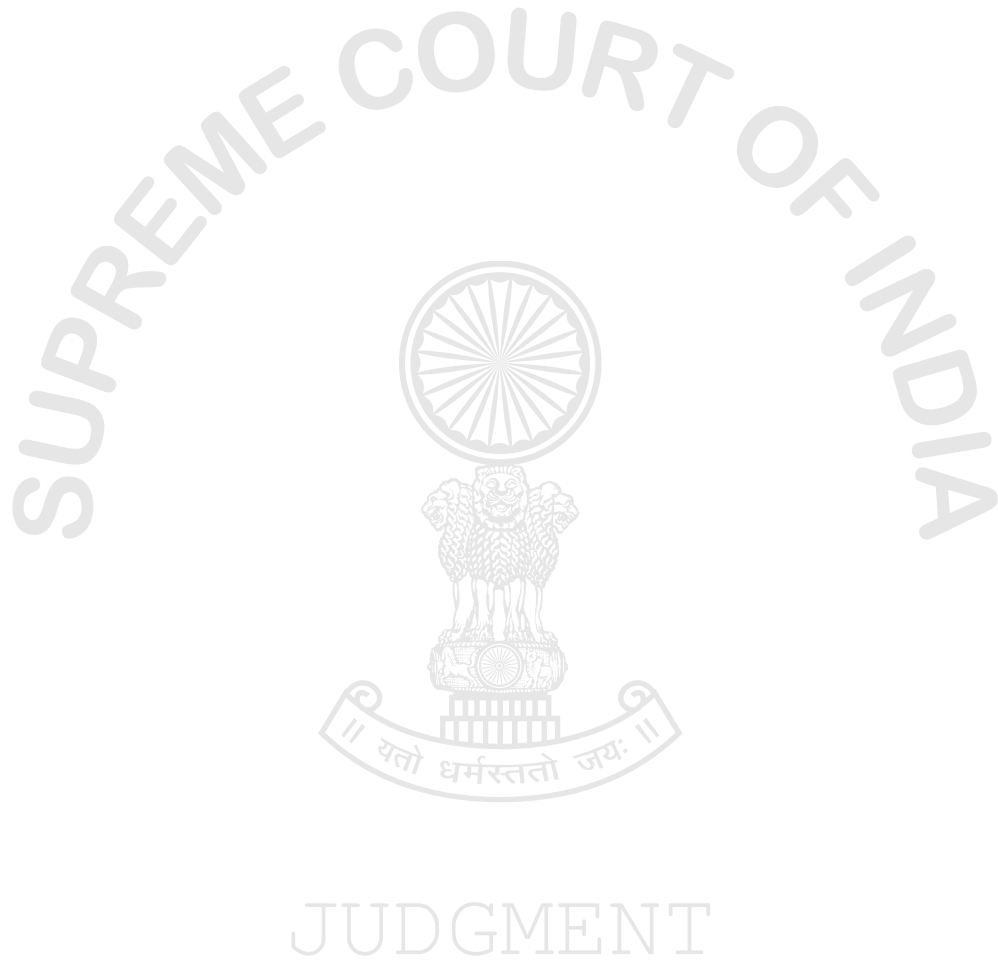
11. In the result this appeal is allowed and the impugned judgment insofar as the appellant is concerned is set aside and the judgment of acquittal passed by the trial court is restored.

.....J.
(V. Gopala Gowda)

.....J.
(C. Nagappan)

**New Delhi;
November 13, 2014**

JUDGMENT



ITEM NO.1A-For Judgment

COURT NO.11

SECTION IIB

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Criminal Appeal No. /2014 arising from SLP (Cr1.) No(s).
6197/2014

K SUBRAMANI

Appellant(s)

VERSUS

K DAMODARA NAIDU

Respondent(s)

Date : 13/11/2014 This petition was called on for JUDGMENT today.

For Petitioner(s) Mrs. Vaijayanthi Girish, Adv.

For Respondent(s) M/s. Nuli & Nuli

UPON hearing the counsel the Court made the following

O R D E R

Hon'ble Mr. Justice C. Nagappan pronounced the judgment of the Bench comprising Hon'ble Mr. Justice V.Gopala Gowda and His Lordship.

Leave granted.

The appeal is allowed in terms of the signed order.

(VINOD KUMAR)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed Reportable judgment is placed on the file)