

CRIMINAL APPELLATE JURISDICTION

T. VASANTHAKUMAR

... APPELLANT

:Versus:

VIJAYAKUMARI

...RESPONDENT

J U D G M E N T

Pinaki Chandra Ghose, J.

1. Leave granted.
2. This appeal, by special leave, arises from the judgment and order dated 22-07-2011 passed by the High Court of Karnataka in Criminal Revision Petition No.263/2011 by which the High Court set aside the judgments of the two Courts below and acquitted the

respondent herein.

3. The genesis of the litigation in the present case is that a complaint under Section 138 of the Negotiable Instruments Act, 1881 was filed by the complainant before the XII Magistrate, Bangalore. The learned Magistrate had, after trial, found the defendant guilty and sentenced her to pay Rs.5,55,000/- and in default of payment of the said amount, to undergo simple imprisonment for a period of five months. This order of the learned Magistrate was challenged in the appeal before the Fast Track Court, Bangalore, but the same was dismissed by the Fast Track Court. The defendant preferred a revision of the Fast Track Court's order before the High Court, being Criminal Revision Petition No.263/2011.

4. The case of the complainant is that he is the owner of the Ullas Theatre situated at Yashwantpur, Bangalore, while the defendant is the distributor of films. The two parties had a business relationship

whereunder the defendant provided movies to the complainant for screening at his Theatre. In May 2006, the defendant sought a loan of Rupees Five Lakhs from the complainant for supporting the making of a Tamil movie "Pokari". The said loan was advanced by the complainant on 20-05-2006. The defendant had promised to repay the loan on release of the said movie. However, the defendant failed to repay the said loan. On repeated requests made by the complainant, the defendant on 16-01-2007, gave a cheque for Rs.5 lakhs, bearing No.822408, drawn on State Bank of Mysore, Vyalikaval Branch, Bangalore. This cheque was presented by the complainant on the same day through his banker Vijaya Bank, Yeshwantpur Branch, Bangalore. But the cheque was returned on 18-01-2007 by the Bank with the remarks: "Stop Payment". Thereafter, the complainant issued a legal notice to the defendant on 27-01-2007, at the office address as well as residential address of the defendant. The notice sent at the residential address through RPAD was duly received, while the one sent at the office address of the defendant was

returned with the report: "Absent - Information delivered". Even after the notice was served, the defendant neither made the payment nor responded to the same.

5. The defendant's case is that she is only the name lender to the business of films distribution run in the name of Vijayakumari Films which is actually controlled and managed by her husband Kuppuswamy. She has disputed taking any loan from the complainant as claimed by him. According to her, she never visited the place of complainant and never borrowed any money. The defendant has claimed that Vijayakumari Films had differences with the complainant in the year 2006, over release of the film "Pokari". The defendant's husband had denied to release the film in the complainant's theatre on the ground that at the time of the release of the said movie, another Kannada movie was being shown there and it could have been a sensitive matter. The defendant's case is that the alleged cheque was given to the complainant in the year 1999 as security against loan

of Rs.5 lakhs taken then. After the defendant paid the loan, the complainant did not return the said cheque saying that he had misplaced it. The defendant alleges that the complainant, due to ill will in release of the movie "Pokari", used this old cheque to take revenge against the defendant firm.

6. The Trial Court found the defendant guilty under Section 138 of Negotiable Instruments Act and sentenced her to pay a fine of Rs.5,55,000/-, in default of payment, she was to undergo simple imprisonment for five months. The first appellate Court found that although the defendant disputed the transaction, they did not dispute the cheque or her signature on it. The learned Sessions Judge (Fast Track Court) found that there was no evidence forthcoming to show that the cheque was issued in 1999. It noted that there was no suggestion put to the defendant with respect to the loan taken in 1999 or cheque given to him as security in 1999. Further the Court relied on the presumption in favour of the complainant under Section 139 and held

that the defendant had failed to rebut that presumption. The Court also rejected the claim of the defendant that she and her husband were not in Bangalore on the alleged date when the loan was advanced i.e. 20-05-2006. The defendant had produced hotel bills of Chennai for those dates, but the Court held that the bills do not prove the presence of the Defendant along with her husband in Chennai. On these grounds the Court did not find weight in the case of the defendant.

7. The High Court in appeal reversed the concurrent finding of the learned Magistrate and learned Sessions Judge. The High Court found that the cheque was actually from the cheque book that was issued prior to 2000 as the cheque leaf itself mentioned the date in printed ink as "__/__/199__". The High Court observed that it is hard to believe that a business transacting party would give a cheque which is of the decade 1990 in relation to the transaction in 2007. The High Court accepted the argument of the defendant that the

Complainant used the old cheque due to ill will because of denial of the defendant firm to release the film "Pokari" in his theatre. Further, the High Court noted that the complainant in his statement has deposed that he had withdrawn the amount of Rs.5 lakhs, 2 days prior to giving it to the defendant but he failed to bring on record any receipt or other proof of such withdrawal of money from bank. The High Court found the case of the complainant lacking to prove the offence under Section 138 of the Negotiable Instruments Act.

8. We have heard the learned counsel appearing for the appellant as also the learned counsel appearing for the respondent. The complainant has alleged that the money (loan) was advanced to the defendant on 20-05-2006 in relation to which the cheque was issued to him by the defendant on 16-01-2007. The cheque was for Rs.5 lakhs only, bearing No.822408. It is of great significance that the cheque has not been disputed nor the signature of the defendant on it. There has been some controversy before us with respect to Section 139

of Negotiable Instruments Act as to whether complainant has to prove existence of a legally enforceable debt before the presumption under Section 139 of the Negotiable Instruments Act starts operating and burden shifts to the accused. Section 139 reads as follows:

"139. Presumption in favour of the holder- 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 for the discharge, in whole or in part, of any debt or other liability."

9. This Court has held in its three judge bench judgment in Rangappa v. Sri Mohan (2010) 11 SCC 441:

"The presumption mandated by Section 139 includes a presumption that there exists a legally enforceable debt or liability. This is of course in the nature of 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. However, there can be no doubt that there is an initial presumption which favours the respondent complainant."

10. Therefore, in the present case since the cheque as well as the signature has been accepted by the accused respondent, the presumption under Section 139 would

operate. Thus, the burden was on the accused to disprove the cheque or the existence of any legally recoverable debt or liability. To this effect, the accused has come up with a story that the cheque was given to the complainant long back in 1999 as a security to a loan; the loan was repaid but the complainant did not return the security cheque. According to the accused, it was that very cheque used by the complainant to implicate the accused. However, it may be noted that the cheque was dishonoured because the payment was stopped and not for any other reason. This implies that the accused had knowledge of the cheque being presented to the bank, or else how would the accused have instructed her banker to stop the payment. Thus, the story brought out by the accused is unworthy of credit, apart from being unsupported by any evidence.

11. Further, the High Court relied heavily on the printed date on the cheque. However, we are of the view that by itself, in absence of any other evidence,

cannot be conclusive of the fact that the cheque was issued in 1999. The date of the cheque was as such 20/05/2006. The accused in her evidence brought out nothing to prove the debt of 1999 nor disprove the loan taken in 2006.

12. In light of the above reasoning, we find that the learned High Court was misplaced in putting the burden of proof on the complainant. As per Section 139, the burden of proof had shifted on the accused which the accused failed to discharge. Thus, we find merit in this appeal.

13. The appeal is allowed. The judgment and order passed by the High Court is accordingly set aside and the judgment dated 22.01.2011, delivered by the Presiding Officer, Fast Track Court-I, Bengaluru, confirming the order passed by the XIIth Addl. Chief Metropolitan Magistrate, Bengaluru, convicting the respondent for an offence under Section 138 of the Negotiable Instruments Act and sentencing her to pay a

fine of Rs.5,55,000/-, in default to suffer Simple Imprisonment for five months, is hereby restored.

.....J
(J. CHELAMESWAR)

.....J
(PINAKI CHANDRA GHOSE)

New Delhi;
April 28, 2015.



JUDGMENT