

RAVICHANDRA V. v. ROSI LINE REENA RANI, (2022-1)205 PLRIJ 033 (Kar.) , 2022 PLRonline 4410

(2022-1)205 PLRIJ 033 (Kar.)

HIGH COURT OF KARNATAKA AT BENGALURU

Before: Justice Mohammad Nawaz

RAVICHANDRA V. – Appellant

versus

ROSI LINE REENA RANI – Respondent.

Criminal Appeal No. 244 of 2019

Negotiable Instruments Act, 1881 (26 of 1881), S. 138 - ‘drawers signature differ’ - Complainant’s case stated that he was working in the firm run by the accused and since the accused asked him to join the said firm as a partner and asked him to invest some amount, he invested an amount of Rs. 7 lakhs and that the cheque was issued towards repayment of the money invested by him - Defence case that the cheque in question was taken away by the complainant, who was working with the accused and then he presented it to the bank by putting her signature - That a police complaint qua loss of cheque had also been lodged - Complainant has not made any effort to establish that the signature found on the cheque was that of the accused and has made no effort to send the cheque to the hand-writing expert and also not examined the bank official/s with regard to the signature found on the cheque - Dates mentioned in Complainants statements does not tally with the date on which the amount in question is said to have been invested - Complainant has failed to prove that the accused to discharge her legally enforceable debt had issued cheque - Acquittal upheld.

JUDGMENT

Mohammad Nawaz, J. - (02.12.2021) - This appeal is by the complainant against the Judgment and Order of acquittal dated 23.04.2019 passed in C.C. No.26420/2017, on the file of the Court of XXH Addl. C.M.M., Bengaluru, acquitting the accused for an offence punishable under [Section 138](#) of the Negotiable Instruments Act.

2. Heard both side and perused the material on record.

3. The Case of the complainant is that, accused is running a business in the name and style of M.R. Enterprises and she is the Proprietor and Director. She was selling mobile phones, mobile spare parts, sim-cards etc. The complainant was working with the accused in her office situated at Chandra Layout, Bengaluru and both are friends, The accused requested the complainant to become a partner in the said enterprises and believing her words, the

complainant invested a sum of lakhs in the last week of September 2016. However, the accused did not induct the complainant as a partner in the business, instead stated that the business is running under loss. The accused also assured that the amount will be settled within 6 months and after the said period, a cheque bearing No.076374 dated 21.06.2017 drawn on Axis Bank, Nagarabhavi Branch, Bengaluru, was issued to the complainant for a sum of Rs. 7 lakhs towards repayment of the money invested by him, with a promise that on presentation of the said cheque, the same will be honoured.

4.The complainant presented the cheque to his banker i.e., Kotak Mahindra Bank, Banashankari Branch, Bengalur and the said, cheque came to be dishonoured on 11.09.2017 for the reason 'drawers signature differ'. Thereafter, the complainant informed the same to the accused and requested her to return the amount however, the accused failed to return the amount, as such with no other alternate remedy, he issued a legal notice on 09.10.2017 by way of RPAD. In spite of service of the said notice on the accused on 10.10.2017, she failed to reply to the said legal notice and repay the amount within the stipulated time and therefore, committed an offence under Section 138 of the N.I. Act.

5.The complainant got himself examined as PW.1 and got marked Exs.PI to 5. The accused got examined herself as D.W.1 and marked Exs.D1 and 2.

6.The trial Court considering the oral and documentary evidence on record, acquitted the accused by its Judgment and Order dated 23.04.2019 passed in C.C. No.26420/2017.

7.The learned counsel for the appellant has contended that the entire approach of the trial Court for acquitting the accused and the reasons assigned for acquittal are not in accordance with law. He has contended that the trial Court has made much about the admission given by the complainant that he does not remember the cheque number as well as the bank. He contends that even though the complainant has been able to mark the relevant documents including the cheque in possession which is signed by the accused, the trial Court has erroneously acquitted the accused holding that he has not at all paid a sum of lakhs to the accused and he has also failed to examine his sister and friend to establish the fact that the amount was paid to the accused. It is his further contention that the cheque in question admittedly belong to the accused and the said cheque was dishonoured by the bank and therefore, there is a legal presumption available in favour of the complainant. He contends that the accused is in the habit of putting different signatures to different documents and therefore the endorsement issued by the bank should not have been made a ground for acquitting the accused. He contends that the accused has not replied to the legal notice and therefore, she has not rebutted the presumption in favour of the complainant.

8.The learned counsel for the respondent has contended that the complainant was working in M.R.Enterprises, which was run by the accused. He submits that at no point of time, the accused had requested the complainant to join the said firm as a partner and received a sum of Rs. 7 lakhs from the complainant. He contends that a complaint was lodged by the accused against the complainant for threatening her and putting pressure etc. to give a sum of Rs. 7 lakhs. He submits that the complainant has not at all stated as to how a huge

amount of Rs. 7 lakhs was given to the accused. He contends that the cheque in question was taken away by the complainant, who was working with the accused and then he presented it to the bank by putting her signature. He contends that the cheque was dishonoured for the reason 'signature differs' and the complainant has not made any effort to send the cheque to the hand-writing expert and also not examined the bank official/s with regard to the signature found on the cheque. The trial Court having appreciated the entire evidence on record has rightly acquitted the accused-. Therefore, seeks to dismiss the appeal.

9. According to the complainant, he was working in M.R. Enterprises run by the accused and since the accused asked him to join the said firm as a partner and asked him to invest some amount, in the last week of September 2016 he invested an amount of Rs. 7 lakhs.

10. It is pertinent to see that though it is the specific case of the complainant that a sum of Rs. 7 lakhs was invested in the last week of September 2016, he has not stated in what mode the said amount was paid to the accused and what are the terms between him and the accused to become a partner in the said enterprises. Admittedly, there is no piece of document executed while the said amount of Rs. 7 lakhs was said to have been invested by the complainant with the accused to become a partner in the said M.R. Enterprises. It is relevant to note that the cheque in question when presented to the bank was dishonoured with a shara 'drawers signature differ'. The accused has been examined herself as D.W.1. It is her specific defence that the complainant was working as a Customer Care Executive from January 2015 to April 2017 in M.R. Enterprises. She had kept the cheque book and the cheque in question was stolen by the complainant, which she subsequently came to know. Immediately, she lodged a complaint to Chandra Layout Police Station. She has denied of having received an amount of Rs. 7 lakhs from the complainant and she has stated that there is no liability.

11. The cheque-Ex.PI is dated 21.06.2017.

According to the complainant, the said cheque was presented to the bank on 21.06.2017 and it came to be dishonoured. Endorsement at Ex.P2 shows that the intimation with regard to dishonour of cheque was issued on 11.09.2017. In the meanwhile, a complaint is lodged by the accused as per Ex.DI on 26.06.2017. The cheque has been dishonoured for the reason that 'drawers signature differ' which fortifies the defence put-forth by the accused that she has not at all issued any cheque signed by her.

12. In the cross-examination of P.W.1, he has stated that he advanced a sum of Rs. 7 lakhs to the accused from the money saved by him in the bank as well as by pledging ornaments at Manappurama Finance Limited and also gave another sum of Rs. 3 lakhs to the accused. The same has not been stated in the complaint. On the other hand, in the complaint he has stated that in the last week of September 2016, he invested a sum of Rs. 7 lakhs as a partner of the accused's enterprises. Even accepting that the complainant could not have remembered the dates on which the amount was advanced or he cannot remember the number of the cheque which was dishonoured, however, it is his specific case that in the month of September 2016, he gave a sum of Rs. 7 lakhs to the accused. But, according to

his cross-examination, the said amount was given in installments by drawing the said amount from his account and also, by giving a sum of Rs. 3 lakhs at one instance and the remaining amount by pledging the ornaments at Manappuram Finance Limited. The complainant has stated that while he was working in M.R.Enterprises, he saved some amount and on 30.08.2016 withdraw the amount and paid the same to the accused. He has got marked Ex.P4-statement of account pertaining to Kotak Mahindra Bank. As per Ex.P4, on 30.08.2016, a sum of Rs. 1,07,000/- was transferred to the account of M.R.Enterprises. However, according to the complainant, he paid a sum of Rs. 7 lakhs in the last week of September 2016. The dates mentioned Ex.P5 does not tally with the date on which the amount in question is said to have been invested.

13.In the case on hand, the accused has taken a specific defence that the signature found on the cheque in question does not belong to her and she has not at all received a sum of Rs. 7 lakhs from the complainant. The cheque was also dishonoured for the reason that 'drawers signature differ' and the complainant has not made any effort to establish that the signature found on the cheque was that of the accused. The trial Court after considering the entire evidence on record has acquitted the accused holding that the complainant has failed to prove that the accused to discharge her legally enforceable debt had issued Ex.P1- cheque in his favour. I do not find any illegality in the order passed by the trial Court. Hence, the following:

ORDER

Criminal Appeal is dismissed.

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