

Anil vs Shivanand Gurupadayya Hiremath on 8 January, 2020

Bench: R. Banumathi, A.S. Bopanna

1

NON-

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 28 OF 2020
(Arising out of SLP (CRL.)No.5420 of 2019)

ANIL

Appel

VERSUS

SHIVANAND GURUPADAYYA HIREMATH

Respo

O R D E R

R. BANUMATHI, J.:

Leave granted.

(2) Challenging the conviction under Section 138 of the Negotiable Instruments Act and levy of fine of Rs.7,00,000/-

(Rupees Seven Lakhs), the appellant-accused has preferred this appeal.

(3) The appellant-accused was running a business in the place rented out by the respondent-complainant. When the appellant left the place total rental amount payable by the appellant to the respondent-complainant was Rs.4,85,000/- (Rupees Four Lakhs Eighty Five Thousand).

For which the appellant issued a cheque bearing No.382422 dated 21.06.2006 for a sum of Rs.4,85,000/-. Date: 2020.01.13 16:32:32 IST Reason:

When the said cheque was presented by the respondent- complainant for the clearance in the Syndicate Bank, it was returned with the endorsement "Account closed". On the request of the appellant, the said cheque was again presented on 26.08.2006; but this time also the cheque was dishonoured.

After issuing of notice to the appellant on 30.10.2006 the respondent-complainant had filed the complaint against the appellant for the offence punishable under Section 138 of the N.I. Act.

(4) The Trial Court held that the notice dated 30.10.2006 was sent only after cheque was dishonoured for the second time on 31.08.2006 and the issuance of notice is not in compliance with Section 138 of the N.I. Act. Vide Judgment dated 28.09.2010, the Trial Court acquitted the appellant under Section 138 of the N.I. Act.

(5) Being aggrieved, the respondent-complainant preferred the appeal before the High Court in Criminal Appeal No.2844 of 2010. Vide impugned judgment the High Court has allowed the appeal preferred by the respondent-complainant and convicted the appellant under Section 138 of the N.I. Act. After recording the defence taken by the appellant, the High Court has held that mere suggestion that a cheque was given to someone else and the same was misused by the complainant would not be sufficient to rebut the presumption under Section 138 of the N.I. Act. The High Court has further held that the burden lies upon the accused to rebut the presumption under Section 138 of the N.I. Act and the appellant has not adduced the evidence to rebut the presumption raised under Section 138 of the N.I. Act. Pointing out that the appellant has not even sent a reply to the notice of the complainant, the High Court reversed the acquittal and convicted the appellant under Section 138 of the N.I. Act. Pointing out that the cheque is of the year 2006 and almost 12 years have been lapsed, the High Court has imposed a fine of Rs.7,00,000/- in default thereof the appellant to undergo simple imprisonment for one year. Being aggrieved, the appellant has preferred this appeal.

(6) Notice was ordered on 08.07.2019 on condition that the appellant should deposit Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand) before the Trial Court. In compliance of the said order, the appellant has deposited fine amount of Rs.2,50,000/- before the Trial Court. Since the respondent has not entered appearance, Mr. Md. Shahid Anwar, Advocate, has been nominated through the Supreme Court Legal Services Committee to appear and argue on behalf of the respondent-complainant. (7) We have heard Mr. Anil V. Katarki, learned counsel appearing for the appellant and Mr. Md. Shahid Anwar, learned counsel appearing for the respondent-complainant and also perused the impugned judgment and the evidence/materials on record.

(8) Considering the findings of the High Court and also taking note of the fact that the appellant has not even sent a reply to the notice of the respondent-complainant, we do not find any ground warranting interference with the conviction of the appellant under Section 138 of the N.I. Act. (9) Insofar as the quantum of fine amount is concerned, the cheque was issued only for the rent said to have been payable by the appellant to the respondent-complainant. The appellant has already vacated the premises and the cheque amount was Rs.4,85,000/- (Rupees Four Lakhs Eighty Five Thousand). Considering the nature of the dispute and the purpose for which the cheque was issued, in our view the interest of justice would be met if the quantum of fine amount of Rs.7,00,000/- (Rupees Seven Lakhs) is reduced to Rs.5,00,000/- (Rupees Five Lakhs).

(10) In the result, the conviction of the appellant under Section 138 of the N.I. Act is confirmed and the fine amount of Rs.7,00,000/- (Rupees Seven Lakhs) is reduced to Rs.5,00,000/- (Rupees Five Lakhs).

(11) Pursuant to the Order of this Court dated 08.07.2019 the appellant has already deposited a sum of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand) before the Trial Court. The appellant shall deposit the balance fine amount of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand) on or before 31.03.2020 before the Trial Court. Failure to deposit the balance amount, as above, within the time stipulated the appellant to undergo simple imprisonment for a period of three months.

(12) Accordingly, the impugned order of the High Court is modified to the extent indicated above and the appeal is partly allowed.

(13) The Trial Court is directed to disburse the fine amount of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand) already deposited by the appellant to the respondent-complainant along with interest, if any accrued, by issuing notice to him. (14) It is further directed that as and when the balance amount of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand) is deposited by the appellant, the same shall also be disbursed to the respondent-complainant.

.....J. (R. BANUMATHI)J. (A.S. BOPANNA) NEW DELHI, JANUARY 08, 2020.

ITEM NO.21

COURT NO.5

SECTION II-C

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Petition(s) for Special Leave to Appeal (Crl.)

No(s). 5420/2019

(Arising out of impugned final judgment and order dated 05-04-2019 in CRLAP No. 2844/2010 passed by the High Court Of Karnataka Circuit Bench At Dharwad) ANIL Petitioner(s) VERSUS SHIVANAND GURUPADAYYA HIREMATH Respondent(s) Date : 08-01-2020 This petition was called on for hearing today. CORAM :

HON'BLE MRS. JUSTICE R. BANUMATHI HON'BLE MR. JUSTICE A.S. BOPANNA
For Petitioner(s) Mr. Anil V. Katarki,Adv.

Mr. Anil C. Nishani,Adv.

Ms. Segunsi,Adv.

Mr. T. R. B. Sivakumar, AOR For Respondent(s) Mr. Md. Shahid Anwar, AOR Dr.
B.P. Singh,Adv.

Mr. Firoz Shaikh,Adv.

Mr. Firoz Ansari,Adv.

Mr. Aamir Naseem,Adv.

UPON hearing the counsel the Court made the following O R D E R Leave granted.

In terms of the signed non-reportable order, the appeal is partly allowed.

Pending applications, if any, shall also stand disposed of.

(MAHABIR SINGH)
COURT MASTER

(BEENA JOLLY)
BRANCH OFFICER

(Signed non-reportable order is placed on the file)