

Karnataka High Court

Sri Gopalakrishna K Kamath vs Smt Chitrakala Prabhu M on 26 June, 2008

Author: R.B.Naik

m mm HIGH sound' or KARNATAKA, BANGALORE
DATED THIS THE 26?" DAY 09 JUNE zoeajj
BEFORE

THE HONBLE MR. JUSTICE
CRIMINAL REVISION P_£_3'FfP;QN NQ;«2*L*5\$£.(£F:'2_Q{36 ' »

BETWEEN

Sri.Gopalakrishna '

Aged about 51 years, _

S/o I{.N.Kamath, " _
Vajra Sccuritim 8: Inv£\$nncm'~.a,.A "_
Mangalom-575 001. ' V " : Petitioner

(By sn. Ptmdikai

smt.ch1t:~al<a1a' A . P\$a%hhs\$:£A%;%%
Aged _about~53'vy£ars,;~--._ V "
W/o;'M.A.Prabh1,;'

'~ N

: Respondcnt

Advocate)

Criminal Revision Petition is film under Section
V'39'?'...4_Cr.P.C praying to set aside the Judgment and order of

fill Additional Sessions Judge, Dakshina Kannada
M-'.af1ealol'e in Cr1.A.No.3l9/2004 Dated 2'2-9-2006 and
_MJ_1ldg1I1ent and order of the JMFCAs? Court, Mangalore in
" C.C.No. 196/ 2003 Dated 9-9-2004.

X £LK\A£!.,;-«PL-M

This petitionmm1ngosnforhnmim. thisdaythccourt,
made the following: '
0 3 __B_ E Q

The pcl:itioncr/ accused is convicted __ if

punishable under Section 138Mof

sentenced to undergo S.I for 5

directed to pay compensation..
months in default to an order of
conviction and " passed by the

JMFC, Mangalgr in said order of

conviction "is~mif.1fn'mcd by judgment dated
22-9-2005 11: Additional smions Judge,
in Cr1.A.No.3 19/2004.

« was Managing Direachor

& Investments Pvt.Ltd., and for the

' he borrowed a sum of Rs.3,50,000/-s

mam 'respondent complainant. Towards thcdischaree or

% he imuod mm cheques; ctmue bearing No. ..9\$O138 for a sum of Rs.1,00,000/-; cheque bwring
No. " 930139 for a sum of Rs. 1,50,000/- and cheque bearing No. \)'L,Qmo.>~U~----

A " if H " respondent] ooxI1pIaJI1an' 1:. 930140 for a sum of Rs.1,Go,000/- . Exs.P.1 to R3 are the
chequw issued by the petitioner/aecusw. The on presentation were returned with bankers as "stop
Daylllent". Exs.P.4 to memo. On return of the issued a legal notice as p€:1"- %tma§§ke good the
money covered the For having served notice Ex.P.8 Eg,P.3(a) is the sigxature of the
peti□ner/aecueeti mag reply has been In the reply he has contetited " were forcibly taken for
beixm retained net for presentation to get them frxat..ir: the that legatti he had also lodged a That
the respondent/complainant has got manager and got marked Exs.P.9 and 13.10, "eeopies ef;.letiger
extracts. Ex.P.12 is the complaint lodged by Itisthecascofthc _ reéspondent/complainant that the
petitiona'/accused while ». taking the lean had askedfor self cheques and aeoordingty were drawn by
the Q .Q:~.«u:~1/-----

Exs.P- 13 to P16 respondent] complainant and handed over the same: to the petitioner/accusad
hcnein and the cheques to bank for cnmhament by a respondent/eozraplainant. He is 3 in his
evidemcc has stated Tor mspondent/complainant as the cheques from the and carried the same to
the A got than encashed and was taken by the the discharge of the said sum to 13.3 came to be
is-sum by the in favour of respondent]

- VIA'-'.Wv«..3.is the bank omciai who has sfsmd that to R3 were drawn an the account the
petitioner/accused in which he was _ 'wor}s':ing 'asi a bank of□tial. He has also statad that the A 5.'
had instructed for stop-payxgnct of the ' cheques. The letter issued by the petitioner/aocused is ~
marked as Ex.P.17. The petitioner/accused denying' his liability and contending that the cheques
was forcibly taken, in proof oi' the said oomerrtiorx examirmd I).W.1 and another Witness D.W.2.
The trial Court as □rst appellate Court held that the petitioner] taken a loan of Rs.3,50,000/- "

towards the discharge of the sariagf: 45 Exs.P.1 to P.3. The choqtioaon 'iosjtiiid with bank endorsemexjaz as T_ issue of legal notice as the to make good the same wi□hi□the 15 days from the date or petitioner/accused has NJ. Act.

. C.3§~.";t on behalf of the peti□bnor/accuw which is claimed to have been given to «iiospondent/cmxxnplairzant undor self-cheque has ' W H 'T mnot him at all and it is, some ottler person Le. P.W.2 iv?ho'fiad withdrawn the money and had not paid the money VT " the petitioner] accused and thus respondant/compiainant has failed to establish that the loan amount was gvon no the £;Q_LL~.£,i.5\~V---

petitioner/accused. It is further the respondent] complainant had paid of Rs.15,000/- and mainly the taken all the cheques in :33 in ailjsuxjiqf contention of the learned c:€iriL1_1_}s<:l i'az);_ 't'"f_hVt.': would not cnurc to the accused in View of the fact ma;%[%§;;e by him under kction 200 a mcnmn of the taken the cheques.

There having taken a sum of Rs. rcspondent/heaz□xl. On.

the ot11c;r"--« pleaded in i E'x.P.3 that the in □hancial distress and though he the amount takm1 as loan, the responde;it;:§5□p1a1nant had forcibly taken the said ___<:heq'ua: s t.as security and had presented the same for 5 This would clearly establish that the V' p:E';titionCI'f8.oCEiSCd had taken loan □mra the ~ u respondant/complainant. In addition to the same, it is also not stated in the reply notice m.P.7 that the loan amount was taken by P.W.2 and not by the pc□□a□grfagcused herein. Thus it is Well established that who had taken loan amount of Rs.3,_59».oOOO/' to I--'.3. The cheques towards th<: 'dis«.haI'g*'f 'iv 6' Aé" J earlier stated the chequeé without encashment gnd payman'. The statutory issued to the petitioner/ao.;;;gs;;e;j, the terms of the notice □nding of the Courts below guilty or the offence of the N.I. Act, (lacs not call for "

is éii'bm£t*..ed by the pctitiancr/accused since he distress had borrowed a sum of 'from the Iespondent/complahlant. Despite bcst'eff§1ff.sv he could not organise to repay the said amount A were several creditors to whom petitioner/accused V. liable and he has been mobilising funds from all » resources to satis□ all the creditors. Even now he is in /\JZs.uq.L:~ 1&-M □hancial di□culties arid as such he sub1;x;z.!2.VtV_s-:.'_ t11at the sentence imp□scd for the pravw excessive and a lenient View shogxldbe taker: _'i1V3:*. the sentence. Taking into accoi3;it;'th:§ 'A the petitioner/accused, 1 harsh and excessive and the Hence, the following:

The a□owed. The order of affcxmw punhhable under af bon□med. The smtcnee for the said s %a-gm: and in Lieu the petitioner 3 % % □%\$ofRs.4,00,000/- in defmlt to undergo six mantlls. Fine amount on rcoavery shai '1 □x respondentmonaplainam; F1nc' amount ' U H is mm due deduction. Thebalance of the shanbc deposited with in a period of two months from "o'''''''''' sa/~.

Judge Sbb/--