

Karnataka High Court

B T Vijay vs Hima Bindu on 3 March, 2010

Author: Jawad Rahim

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dates this the 03<sup>rd</sup> Day of March 2010

BEFORE  
THE HON'BLE MR JUSTICE JAWAD  
CRL.A.NO.400/2004 'O I' I  
BETWEEN:  
SRI BT VIJAY, \_

S/O BT THIMMARAYAPPA, g  
AGED ABOUT 74 YEARS, ~~,  
RESIDING AT ANAND APARTMENT,  
2A, SADASHIVAI AGAR, SI -  
RMV EXTN., - -  
BANGALORE - - 560

Q 94\*..-\* \_ .  
I "" .v, AP.F?EL' LAI\ET  
4.: ' [By Sri K.Ravi\_S'Hvarjka'r, :Ac\$ v.

3351- Ashbk I€1a'I'ana'h.alii-- }7&SS0CiateS]

SMI1\$?€ISMA..0BI«!\2D11?".\_\_\_ \_  
2W/'O 1.'/\TE.Es~A A=NIi;».KUMAR,

:58'; 1.5"" CROSS, 'I-§T"I.IAII\:,  
AECS I.AvD=..rr',,, "

-- .. SANJ}"«YNAGAR," -

B.ANGALO.RE\_-- 5-50 094

..RESPONDENT

I I. \_:[By Sri MIN.Nehru & Associates, A€x/.]

CRL.A IS FILED UNDER SECTION 378(4) CR.P.C  
. PRAEI, I\$ jG TO SET ASIDE THE ORDER DATED 29-01-2004  
\_ PASSED BY THE XVTH ADDITIONAL C.M.M., BANGALORE CITY  
7.II'I\i":C.C.NO.32677/2002 AND CONSEQUENTLY CONVICT THE  
ACCUSED FOR THE OFFENCE P/U/S 138 OF N.I.ACT.

THIS CRLA COMING ON FOR ADMISSION THIS DAY, THE

COURT DELIVERED THE FOLLOWING:

IE3"

## JUDGMENT

This is the complainant's appeal against the judgment dated 29.1.2004 in C.C.No.32677/.,2d4QA2t'\_.or; the file of the xv Addl. c.M.M., Bangalorggfatquiiicttil's respondent of the charge for the;"oti'ence is of the Negotiable Instruments Act"{fAo'r~'..shoi-tfthle' N.I.f~\'c'ti)'.'\*..g

2. The appeai filed -.oriw..V\_%23.3.2\_\_OO4'l,VV-,:it':\_i's"-snot yet admitted though the responVdent'gvis"d.uIy rleipresented. eéra ad muivslsio n .

Appeal is admitted and by consent it is'-taken up for final disposal. "-S';--i.ft1e'u-contextual facts are;

..\_\_The«scomplainant initiated prosecution against the .. respondent on the accusation that respondent had «"~.\_VVi:)o-r"rowed from him a sum of Rs.1,00,000/- agreeing to \*:repay the same, but failed. On persistent demands she made, issued cheque on 22.2.2002 for discharge of the liability but the cheque on presentation to the Bank on 27.2.2002 was dishonoured. The statutory notice" issued in this regard was not compiied necessitating act\_ion:~..\_g's\*-. On presentation of the compiaint,\_\_\_.-3V\_:tHh'e"5.'E'ea'rh.ed,g jurisdictionai Magistrate took cognizanc\_e""for--:'\_the'-offence". under Section 138 of the N.;Actjfaha"rrssiuanfrnomacifthe accused-responent. Thesrespondient put\*u'p§jt'h.et"defence" of denial simpliciter p\_necessiptat:i'ng =t\_riai,..dr-urivnguvwhiciw, the compiainant examinedhims\_eif{\_a:s piaced reiiance on 10 documents aiso examined herseif \_--:whVo.: The triai " on record that the comptiainanitiititédadin ,u'r1eqvu\_ivo'ca| terms admitted that there was adrnoneyrViendir;is:'----.;iraV.nsaction between him and the husb'an.d of thegrespondent and that amount was stiii due .2 to; hi\_mi\_--\_7~.Since the transaction of ioan between the the husband of the respondent was su'bsis~tin'g}; the learned 3udge disbelieved that the V " compviainant would have again advanced Rs.1,00,000/-- to respondent who was oniy a housewife. The "observation of the triai Judge to reach such a conclusion is found at para--7 of the impugned judgment. The second aspect noticed by the triai }udge was that the accused had denied signature on the document and she had "alleged that it was a forgery. The third aspect noticed by.V\_th\_4e'~~triai Eudge was that the husband of the accuse§d.."d"Li--.fih{i lifetime had obtained from he\_rM.Mc\_ertai\_ri""b%an!<l\*cheVques". signed and such cheques must;~:4ha§Ier.\*been "gill/en::"by."\*h.er husband to the comp|ainant.""--.\_On theseafactlsftherrrl-earnedtL' trial Judge concluded that |o\_el:iVca:i\_\_inference. be that the complainant WOV{.£"l"(Zlv:"r1Ot". l'i§\feat'.aV§:'«ild.l1--CBd Rs.1,00,000/~ when there was repayment of Rs.4,00,Q\_Qo§;t§' Nurturing a doubt the learned trial ' ' €.,V'--Sri.RVavi.\_ljV'.\_S'hanl<a\*r, learned counsel for the appellant ta.kenA"me"".through the evidence on record as 'a'iso' S'ri.M...N.Neh'r'u}'V|earned counsel for the respondent. uwas\_j..urged before me by the appellant's counsel that ina~\..Ii\_ejw'lof certain presumptionis available in favour of the conipiainant against the accused incorporated under

'Sections 118 and 139 of the N.I.Act, the burden was on it \_\_\_\_the accused to rebut the presumption. On the other hand, the trial Court has in its wisdom declined to raise presumption in favour of the complainant and has\_\_in fact shifted the burden of proof on the complainant. if

7. In negation to it, learned counsel Srit.Ne.hru' \_\_\_\_ "wo:ul.d contend that existence of debt had to 'theft complainant with clinching evidencet1:"The«scornph:lainan't\_ha'd failed to establish that thechequeinsépugneVd5Twga'sissued respect of 'existing liability'. "V""e»l§l\_'ere possesseioin a cheque by the complainantveVntvit~le himxto an order against the accused.VH\_'l' -\*i't.Tw\$avs'«'~~urged that the circumstance 'in;g.ti§9.ihic:h the"xaccuse--d=w.ais placed itself show that :s\_he--\_ participating in the business nor was'wi\_n\*nee'd\_ ainyérnoney as the husband was the pe.i{sontr.dea|ingwivth all business transaction. " 2,8; E<eeping"i'n"mind what is urged, I have examined facts and the analysis of the trial Judge to re.cord,.acqfuitta|. The evidence on record as discussed abo|ieiV\_\_is not in dispute, the cheque impugned is under the 's.ig:nature of the accused. The trial Judge compared the it \_\_\_\_signature on the cheque with the admitted signature of the accused. On such comparison, it opined that the to show that there was no existing debt or liabiitiy as on the date of presentation, there is no reason why the presumption under Section 139 of N.I.Act should no't»,have been drawn. The trial Court instead of the evidence in the Eight of this provision has. to borrowed by the husband of res,pon:d,en;t""a,nd\_,as it ' discharged by his disbeiéved\_evidéen\_ce of theft co:rnp|a;in'ant;;n' Since the trial Court has effect of presumption under Act, the right course would be to the trial Court to of being heard and Z □g thenixgiftfo \* 1 - .\_, ip'as'S <h:'a p p r o p r i a t e orders taking into considferationvft'i1e""ey;.d:e'nc'e:aiready on record. Since the matter. is pending from the year 2002 before the trial jrcourt,;.e><ped\_itious disposal is desirabie. Besides, it is there is element of possibie settiement b'e"tween""the parties. For these two reasons, the 'rim,\_pug"ned judgment is set aside and the matter is C7-Jrfenaanded to the triaf Court for disposaf afresh according to "flaw after giving an opportunity to both sides to argue the matter afresh but on the evidence aiready on record, preferably within the outer iimit of three months frpm the date of receipt of records and copy of this order, .-

1LDee m\_v\*□, ab. ..