

S. J Srinivas vs S/O. R. S Janardhanan on 18 September, 2021

IN THE COURT OF THE LXXII ADDL. CITY CIVIL
& SESSIONS JUDGE AT MAYO HALL
BENGALURU, (CCH-73)
Present:

Sri.Abdul-Rahiman. A. Nandgadi,
B.Com, LL.B., (Spl.,)
LXXII Addl. City Civil & Sessions Judge, Bengaluru.

Dated this the 18th day of September, 2021.

CrI. Appeal. No.25136/2020

Appellant/
Accused:- S. J Srinivas,
S/o. R. S Janardhanan,
Aged about 50 years,
R/at No.806, 2nd A Cross,
1st Block, 8th Main HRBR Layout,
Bangalore-560043.

[By Sri. Sursh S Lokre-Advocate]

V/s

Respondent/
Complainant: Goverdhan Jayaram,
S/o Jayaram,
Aged about 54 years,
Basappa Road,
Shanthinagar,
Bangalore- 560 027.

(By Sri. BAB-Adv.)

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CrI. Appeal.No.25136/2020

JUDGMENT

This Appeal is preferred by the Appellant/ Complainant U/Sec. 374 of Cr.P.C, being aggrieved by the Judgment of conviction passed by the XVII Addl. Judge, Court of Small Causes and Addl. CMM, Bangalore, in CC.No.55684 of 2018, dtd.03.06.2020, convicting the Appellant for the offence punishable U/Sec. 138 of NI Act, thereby sentencing him to pay fine of Rs.15,000/-. In default to pay fine, the Accused shall undergo Simple Imprisonment for a period of one month.

This Appeal is preferred for enhancement of fine amount by the Complainant.

The Complainant has filed a memo to consider this appeal under Sec.386(e) of Cr.PC.

2. The Brief facts leading to filing of the present appeal are:

The present Appellant filed a Complaint U/Sec.200 of Cr.P.C. against the present Respondent, alleging that, as per the request of the Respondent he had given handloan of Rs.24,00,000/- in all on several occasions and the Respondent was due to repay an amount of Rs.17,00,000/- to him. The Respondent had also executed an Agreement in his favour to repay the said amount. Further the Respondent had issued two Cheques towards repayment of the said amount under Cheque No.79949 and 79948 dtd.26.01.2018 for Rs.5,00,000/- and dtd.07.02.2018 for Rs.12,00,000/-, respectively. But the said Cheques were unencashed. In the mean time, the Respondent paid an amount of Rs.1,00,000/- byway of bank transfer. On several requests the Respondent issued the Cheque in his favour for the sum of Rs.16,00,000/-. On presentation of the said Cheque the same has returned unencashment with an endorsement "Funds Insufficient". He has issued a legal notice to the Respondent calling upon him to pay the amount covered under the said Cheque. The Respondent has neither replied nor complied the said notice. On completion of the stipulated period he was constrained to file the Complaint before the Trial Court.

3. On being satisfied, the Trial Court has issued summons U/Sec.204 of Cr.P.C. to the Respondent/Accused on 04.07.2018. Due to absence of the Respondent/Accused NBW was issued against him. The Respondent/Accused appeared before the Trial Court on 10.04.2019 and he was enlarged on bail. Substance of Accusation of the Respondent/Accused was recorded by the Trial Court on 21.05.2019, wherein the Respondent pleads not guilty and claims to be tried.

4. The Complainant in order to prove his case got examined himself as P.W.1 and initially got marked 13-documents as Ex.P.1 to Ex.P.13 and later on got marked another document- Bank Statement as Ex.P14. PW1 was cross examined on behalf of the Respondent/Accused on 19.06.2019.

Statement of the Respondent/ Accused was recorded by the Trial Court under Sec.313 of Cr.PC on 21.09.2019. The Trial Court heard both the sides and has recorded Judgment of Conviction, against the Respondent/Accused, wherein the Respondent is directed to pay fine of Rs.15,000/-. It is this order of imposing fine which is challenged by the Appellant/ Complainant under this appeal.

5. On filing the appeal, this Court has issued notice to the Respondent. The Respondent has appeared on 05.01.2021. TCR were secured on 08.03.2021. Heard the Arguments advanced by the Learned Counsels for the Appellant and Respondent. The Learned Counsel for the Appellant has placed his reliance on three decision reported, in 1) (2009) SCC 513; 2) 2007 4 SCC 752; and 3) (2015) 9 SCC

755.

6. The Appellant has preferred this appeal on the following grounds:

Grounds of Appeal:

- a) The Trial Court has failed to consider that, the Complainant has merely admitted his signature on Ex.D1, but has not admitted the contents of Ex.D1:
- b) Though the Trial Court has concluded that the Accused has not denied his liability to pay an amount of Rs.16,00,000/- to the Complainant, has rightly convicted the Accused for the offence punishable under Sec.138 of NI Act, but on believing Ex.D1 has erroneously imposed fine amount of Rs.15,000/-, which is unjust:
- c) The Trial Court without proof of the contents of Ex.D1 has placed its reliance on the said document, which is improper;
- d) The Trial Court has failed to reject the application filed by the Complainant under Sec.91 of Cr.PC;
- e) The Trial Court ought to have tested the genuineness of the memorandum of understanding dtd.31.12.2018-Ex.D1, prior to placing its reliance on it;
- f) The Trial Court when it has convicted the Accused under Sec.138 of NI Act, ought to have imposed fine to the extent of twice the Cheque amount, but has erroneously imposed fine of Rs.15,000/- only;
- g) The Trial Court has not correctly applied the Principle of Law laid down through Sec.91 to 94 of Indian Evidence Act;

Hence, prayed to allow the said appeal by enhancing the fine amount.

7. Following points arise for my consideration;

- 1. Whether the Appellant/ Complainant shows that, the Trial Court is wrong in placing its reliance on Ex.D1- Memorandum of Understanding dtd.31.12.2018?
- 2. Whether the Appellant/ Complainant shows that, the Complainant has only admitted his signature on Ex.D1 and not its contents?
- 3. Whether the Appellant/ Complainant shows that, the Trial Court has improperly applied the provisions of Secs. 91 to 94 of Indian Evidence Act, while considering Ex.D1?
- 4. Whether the Appellant/ Complainant shows that, rejection of his application under Sec.91 of Cr. PC is incorrect?

5. Whether the Appellant/ Complainant shows that, order of imposing fine by the Trial Court is improper in law?

6. What Order?

8. My finding on the above points are as under:

Point No.1 : In the Negative;

Point No.2 : In the Negative;

Point No.3 : In the Negative;

Point No.4 : In the Negative;

Point No.5 : In the Negative;

Point No.6 : As per final order for the following :

REASONS

9. The rank of parties will be referred to as they were before the Trial Court.

10. Point No.2:-

The first contention taken up by the Learned Counsel for the Appellant that, the Complainant has merely admitted his signature on Memorandum of Understanding dtd.31.12.2018-Ex.D1 and has not admitted the contents of the said document.

The Learned Counsel for the Appellant would contend that, merely admitting the signature on the document will not discharge proof of the contents of the said document. He has placed his reliance on the decision of the Hon'ble Apex Court, in the case of Nandkishore Lalbhai Mehta V/s New Era Fabrics Pvt Ltd., and Others reported in (2015) 9 SCC 755, wherein it is held that;

"Merely identification of the signature on the document, does not prove its contents."

11. Percontra, the Learned Counsel for the Respondent would contend that, the Complainant/PW.1 has not only admitted his signature on Memorandum of Understanding-Ex.D1, but also has admitted the relevant contents of the said document.

12. Coming to the ocular evidence, on this point, more specifically,

a) cross-examination of PW.1, at Page No.1, Line Nos.1 to 4, which reads as under:-

"

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As per this evidence, PW.1 admits his signatures on Memorandum of Understanding, on confrontation and admission, the said Memorandum of Understanding is marked as Ex.D1 and the signatures of the Complainant is marked as Ex.D1(A) to Ex.D1(D)

b) cross-examination of PW.1, at Page No.1, Line No.5, which reads as under:-

".... 1 1"

As per this evidence, PW.1 admits that, he has signed Ex.D1 on reading condition No.1 shown in it.

c) cross-examination of PW.1, at Page No.1, Line Nos.9 to 11, which reads as under:-

"..... 1 2 □ □ □ □□
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As per this evidence, PW.1 admits that, as per the second condition of Ex.D1, matter is settled as full and final and has agreed not to take any further action and proceed with the case.

13. As per the documentary evidence placed on record from the side of the Accused on confronting the same to the Complainant as Ex.D1, it is seen that, the first condition reads as under:-

"1. The first party confirms that he has received the mutually agreed amount in full and final satisfaction from the second party before the undersigned witnesses, and hereby report and confirm the receipt of the same to the full and final satisfaction of first party before the undersigned witnesses."

As per this first condition, the first party referring the Complainant in this case, has confirmed to have received the mutually agreed amount, in full and final satisfaction from the second party, referring the Accused in this case, before the undersigned witnesses and further report and confirmed the receipt of the same to the full and final satisfaction.

Further as per the second condition of Ex.D1, which reads as under:-

"2. The first party undertakes not to make any future claim against the second party as matter is fully and finally settled between the parties amicably."

As per this condition, the first party i.e., the Complainant has undertaken not to make any future claim against the second party i.e., the Accused, as the matter is fully and finally settled between them amicably.

14. So as per the above ocular evidence referred to supra, coupled with documentary evidence - Ex.D1, it is crystal clear that, the Complainant has not only admitted his signature on the Memorandum of Understanding as per Ex.D1(A) to Ex.D1(D), but also has confirmed that he has gone through the relevant contents of Ex.D1 i.e., condition one and two mentioned therein while executing the said document.

15. Under such circumstances, it is very hard to believe the contention of the Learned Counsel for the Appellant, contending that, the Complainant has merely admitted his signature and not the contents.

Hence, I am constrained to answer POINT NO.2 IN THE NEGATIVE.

16. POINT NO.3:-

The second contention of the Learned Counsel for the Appellant is that, the Trial Court has improperly applied the provisions of Sec.91 to 94, more specifically, Sec.91 and 92 of Indian Evidence Act, while considering Ex.D1.

17. I have carefully gone through the Judgment passed by the Trial Court, more specifically, Para No.21 of the Judgment, wherein the Trial Court has opined that, evidence contrary to Ex.D1 attract Sec.92 and 94 of Indian Evidence Act, 1872 and same is prohibited under law and has arrived at a conclusion that, the Accused has settled the entire liability covered in Ex.P3- Cheque to the satisfaction of the Complainant and the Complainant is estoppel from claiming the compensation on execution of Ex.D1- Memorandum of Understanding dtd.31.12.2018.

18. Coming to the ocular evidence, more specifically, cross-examination of PW.1, at Page No.1, Line Nos.5 to 8, which reads as under:-

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As per this evidence, PW.1 volunteers that, Ex.D1 was not only one document, but there was an another document which was executed inbetween the parties and as per the said document, the Accused had undertaken to pay amount through RGTS.

18.01. If the Complainant contends so, then it is for the Complainant to produce the said document and bring the cogent material evidence on record, to substantiate his contention. But the Complainant has neither produce any document nor has led any ocular evidence to show that apart

from Ex.D1- Memorandum of Understanding dtd.31.12.2018, he and the Accused had also executed another document, wherein the Accused had undertaken to repay certain amount through RGTS.

18.02. Further coming to the ocular evidence, on this point, more specifically, cross- examination of PW.1, at Page No.1, Line Nos. 8 and 9, which reads as under:-

".... 1 □ i £ ¥ □ . 1
§ ¥ □ "

As per this evidence, PW.1 admits that, in Ex.D1 there is no any recital withregard to execution of another document as well as there is no any recital withregard to the amount to be returned.

18.03. The Complainant though had produced the statement of account at Ex.P14 by recalling himself on 18.12.2019, he would have led the evidence by producing some cogent document, muchtheless the another document which is contended by him in his cross-examination; and would have led evidence of the witnesses to Ex.D1- Memorandum of Understanding dtd.31.12.2018, to show the existence of another document and the contends of the another document wherein the Accused has undertaken to repay certain amount by RTGS.

19. under the above said facts and circumstances, when the Complainant has admitted the execution of Ex.D1- Memorandum of Understanding dtd.31.12.2018 and the contents of the said document, more specifically, condition Nos.1 and 2, then without production of any documentary evidence, he cannot lay evidence contrary to the said document. Rightly the Trial Court has considered the said aspect and has held that, leading of oral evidence contrary to the admitted documentary evidence will be in contravention of Sec.91 to 94 of the Indian Evidence Act.

Hence, I do not fine any stuff in the submission of the Learned Counsel for the Appellant to contend that, the Trial Court has improperly applied the provisions Sec.91 to 94 of Indian Evidence Act, while considering Ex.D1- Memorandum of Understanding dtd.31.12.2018.

Hence, I answer POINT NO.3 IN THE
NEGATIVE.

20. POINT NO.1:-

The Learned Counsel for the Appellant would contend that, the Trial Court has wrongly placed its reliance on Memorandum of Understanding dated 31.12.2018-ExD1.

21. The Trial Court has observed in Para No 19 of its Judgment that the Complainant has not disclosed the fact of his executing Memorandum of Understanding dated 31.12.2018 till June 2019.

Inorder to appreciate this aspect, the relevant events and dates are as under:

Memorandum of Understanding dt: 31.12.2018; Examination of PW1 dt: 04.07.2018;
Accused appeared before the Trial Court dt: 10.04.2019;

Plea of Accused recorded on dt: 21.05.2019; Documents identified as Exp1 to Exp13
dt: 21.05.2019; Matter is posted for cross of PW1 dt: 07.06.2019;

PW1 is cross examined and ExD1 is confronted dt: 19.06.2019;

Memo is filed on behalf of the Complainant, reporting that Complainant has received
Rs 7,50,000/- dt: 19.06.2019;

Exp14-Statement is produced dt: 18.12.2019.

22. Though the Complainant has executed the Memorandum of Understanding-ExD1
on 31.12.2018, but he has not disclosed the said fact during the proceeding before the
Trial Court on 10.04.2019; 21.05.2019; and 07.06.2019. But a memo is filed on
19.06.2019, only after confrontation of ExD1 to the Complainant.

23. Further, only after confrontation of ExD1-

Memorandum of Understanding dated 31.12.2018, the Complainant has produced the Statement on
18.12.2019, at Exp14. As per Exp14, the Complainant has received an amount of Rs 3,00,000/- on
01.09.2018 and Rs 4,50,000/- on 10.12.2018. But even these facts have not been disclosed by the
Complainant. And only after confrontation of ExD1, the Complainant has filed a memo contending
that he has received Rs 7,50,000/-

from the Accused and he has yet to receive Rs 8,50,000/-.

Firstly, ExD1- the admitted document, doesnot contain as to what is the settlement amount arrived
inbetween the Accused and the Complainant;

Secondly, ExD1 does not disclose or contain a recital that, the Accused has paid certain amount and
yet he has to pay Rs 8,50,000/-, as contended by the Complainant.

Thirdly, ExD1 contains a recital that the on settling the amount in full and final, the parties have
entered into the said Memorandum of Understanding.

24. Under such circumstances, the Trial Court is right in placing its reliance on the admitted
document i.e., ExD1-Memorandum of Understanding dated 31.12.2018 and to arrive at a conclusion
that the Accused has settled his entire liability covered under Exp3-Cheque, to the satisfaction of the
Complainant and thereby the Complainant is estopped from claiming the compensation by
executing ExD1-MOU. No any error can be attributed to the conclusion arrived at by the Trial Court.

Hence, I am constrained to answer POINT NO 1 IN THE NEGATIVE.

25. POINT NO 4:

The Learned Counsel for the Appellant would contend that the Trial Court ought to have allowed the application filed by the Complainant U/Sec 91 of CrPC, seeking direction to the Accused to produce the details of payments of Rs 8,50,000/- to him.

25.01. I have carefully gone through the application filed by the Complainant U/Sec 91 of CrPC, which is at Page No 76 of the Trial Court Record. So also I have carefully gone through the Objections filed by the Accused to the said application, which is at Page No 86 of the Trial Court Record.

25.02. I have also carefully gone through the Orders dated 07.08.2019 passed by the Trial Court, rejecting the application of the Complainant.

The Trial Court has opined that, since the Accused has contended that he is not in possession of the documents, question of directing him to produce the said document, doesnot arise at all.

25.03. In the application filed by the Complainant, more specifically at Para No 2, the Complainant has contended that he has to receive an amount of Rs 8,50,000/- from the Accused.

When the Complainant has contended so, it is for the Complainant to prove the same, by leading cogent evidence to substantiate his contention.

The Complainant has not produced any documentary evidence, to show that, he is yet to receive an amount of Rs 8,50,000/- from the Accused.

Secondly, the Complainant has admitted execution of Memorandum of Understanding dated 31.12.2018, which is marked on confrontation to him, as ExD1. As per the said document, neither any specific amount arrived at settlement, inbetween the Complainant and the Accused is mention, nor there is a mention that the Accused has agreed to pay an amount of Rs 8,50,000/-, as contended by the Complainant. But there is a recital in the said document that the MOU is entered inbetween the Complainant and the Accused on arriving at a full and final settlement, inbetween them.

Thirdly, the Complainant in his cross examination, has voluntarily contended that, apart from the MOU, there was another document executed inbetween him and the Accused, wherein the Accused has undertaken to repay the amount through RTGS. But the Complainant has neither produced the said document, nor has led any evidence to show its existence. This forms the second ground to reject the application of the Complainant, apart from the ground mentioned by the Trial Court.

Thus, no any error can be attributed on the Trial Court for rejection of the Application, filed by the Complainant U/Sec 91 of CrPC.

Hence, I am constrained to answer POINT NO 4 IN THE NEGATIVE.

26. POINT NO 5:

The Learned Counsel for the Appellant would contend that, though the Trial Court has arrived at conclusion that the Accused is found guilty of offence punishable U/Sec 138 of NI Act, but has failed to sentence properly i.e., to award compensation to the Complainant, in the form of fine.

The Learned Counsel for the Appellant would further contend that the Appellant is empowered U/Sec 386(a) of CrPC to impose sentence, once it concludes that offence U/Sec 138 of NI Act has been committed. The Appellate Court cannot remit the case back to the Trial Court for imposing sentence. He has placed his reliance on the decision of the Hon'ble Apex Court in the case of Kumar Exports Vs Sharma Carpets, reported in (2009) 2 SCC 513, wherein it is held in Para No 26, as under:

"26. This Court has also noticed a strange and very disturbing feature of the case. The High Court, after convicting the appellant under Section 138 of the Act, remitted the matter to the learned Magistrate for passing appropriate order of sentence. This course, adopted by the learned Single Judge, is unknown to law. The learned Single Judge was hearing an appeal from an order of acquittal. The powers of the Appellate Court, in an appeal from an order of acquittal, are enumerated in Section 386(a) of the Code of Criminal Procedure, 1973. Those powers do not contemplate that an Appellate Court, after recording conviction, can remit the matter to the trial court for passing appropriate order of sentence. The judicial function of imposing appropriate sentence can be performed only by the Appellate Court when it reverses the order of acquittal and not by any other court. Having regard to the scheme of the Code of Criminal Procedure, 1973 this Court is of the view that after finding the appellant guilty under Section 138 of the Act, the judicial discretion of imposing appropriate sentence could not have been abdicated by the learned Single Judge in favour of the learned Magistrate. Having found the appellant guilty under Section 138 of the Act it was the bounden duty of the High Court to impose appropriate sentence commensurate with the facts of the case. Therefore, we do not approve or accept the procedure adopted by the High Court. Be that as it may, in this case, we have found that reversal of acquittal itself was not justified."

Further the Learned Counsel for the Appellant would contend that, interest of justice will be subserved if the Respondent is directed to pay twice the amount of the Cheque to the Complainant and he has placed his reliance on the decision of the Hon'ble Apex Court in the case of P.Suresh Kumar Vs R. Shankar, reported in (2007) 4 SCC 752, wherein it is observed in Para Nos 21 to 25, as under:

"21. The question which now arises for consideration is as to whether any case for awarding a substantial sentence has been made out. We do not think so. Grant of compensation, in our opinion, would subserve the purpose.

22. Appellant may also file a suit for damages and/ or for other reliefs. We do not know what was found by the auditor upon scrutiny of the books of account of the partnership firm.

23. The relationship between the parties is not disputed.

24. The Respondent has not been charged with any fraudulent action. He had a probable defence. Appellant furthermore had not preferred any appeal against the judgment of the learned Trial Judge for enhancement of the sentence. It may be that quantum of compensation has been altered to that of the fine but in effect and substance the same did not matter.

25. In our opinion, therefore, interest of justice would be subserved, if the respondent is hereby directed to pay a compensation of Rs.7,00,000/- in stead and place of a fine of Rs.5,000/-, as has been directed by the High Court. Thus, the appellant would be entitled to get the aforementioned sum of Rs.7,00,000/- by way of compensation.

27. Now advertng to the facts of the instant case at hand, in the background of the above decisions, it can be said that, in the present case, a peculiar fact is brought on record by the Accused, in the cross examination of PW1/Complainant, that he and the Complainant had entered into a Memorandum of Understanding dated 31.12.2018, on settling the issues inbetween them; and the said fact is admitted by the Complainant, so the said Memorandum of Understanding is marked on confrontation as ExD1.

28. Secondly, the object of the provisions of the Negotiable Instrument Act, 1881, to impose fine only, wherein the said fine includes the compensation to be paid to the Complainant U/Sec 357(1)(b) of CrPC; or to impose fine and compensation, separately upon the Accused, on finding him guilty of the Offence punishable U/Sec 138 of NI Act, is to see that merely the Accused should not only be punished, but also to see that Complainant is to be compensated, for the wrong committed by the Accused, on issuance of the Cheque, which has subsequently dishonoured.

29. But in the instant case at hand, the Accused has madeout a case that he has got settled his liability under Exp3-Cheque, with the Complainant, wherein the Complainant has executed the Memorandum of Understanding dated 31.12.2018-ExD1. Under such circumstances, the Complainant is estopped from claiming any compensation, in the form of fine amount. Rightly the Trial Court has considered this aspect, in its Judgment at Para No 21. I do not find any error, on such conclusion.

30. The Trial Court has considered all the aspects, the grounds of defence taken up by the Accused as well as the contentions raised by the Complainant.

When no fault is committed by the Trial Court, interference by this Court does not arise at all. Thus, I am declined to interfere with the findings recorded by the Trial Court.

31. Necessarily, the Order of imposing fine by the Trial Court is proper and in accordance with the objects of the provisions of the Negotiable Instrument Act, 1881.

Hence, for the above reasons, I answer POINT NO.5 IN THE NEGATIVE.

31. POINT NO.6:

For having answered Point Nos 1 to 5 in the Negative, I proceed to pass the following:

ORDER Acting U/Sec.386 of Cr.P.C., the Appeal preferred by the Appellant/Complainant is hereby Dismissed.

In the consequences, the order passed by the Learned XVII Addl.

Judge, Court of Small Causes and Addl. CMM, Bangalore in C.C.No.55684/2016 dtd 03.06.2020, recording conviction of the Accused, is hereby confirmed.

The Trial Court shall execute its order, as per law.

No order as to costs.

Remit the TCR to the Trial
Court, on obtaining necessary

acknowledgement, from it, alongwith the copy of this Judgment.

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(Dictated to the Stenographer directly on computer system, computerized by her and print out taken by her, after correction, signed and pronounced by me, in the open court on this the 18th day of September, 2021.) [Abdul-Rahiman. A. Nandgadi] LXXII Addl.City Civil & Sessions Judge, Bengaluru. (CCH-73)