

(1916) 04 MAD CK 0052
In the Madras High Court

Muthu Reddi alias Duraiswamy Reddi	APPELLANT
Vs	
Velu Asari and Others	RESPONDENT

Date of Decision : 14-04-1916

Acts Referred:

Citation : 35 Ind. Cas. 591 : (1916) 4 LW 34

Hon'ble Judges : Seshagiri Aiyar, J

Bench : Single Bench

Judgement

Seshagiri Aiyar, J.—The point for decision is whether it is open to the maker of a promissory note payable on demand to plead, against a holder in due course, that he paid the money to the payee before the endorsement. The learned Vakils who appeared on either side argued the question ably before me. The note in question is dated the 12th August 1912 and is for Rs. 200. Certain payments made towards it are endorsed on it. It is alleged by the defendants that some other payments made by them were, by mistake, not entered on the back of the note. The endorsement to the plaintiff was. on the 26th of August 1914. The defence to the suit was that the note was fully discharged before the endorsement and that the assignment was fraudulent. The Subordinate Judge framed no issue on the second plea. He held that on the date of the endorsement, nothing was due on the note and dismissed the plaintiff's suit against the makers.

2. I am unable to agree with the Subordinate Judge. Mr. Natesa Sastriar, who appeared for the defendants, relied upon Section 60 of the Negotiable Instruments Act and on *Commundun Mohideen Saib v. Oree Meerah Saib* 7 M.H.C.R. 271. It is true that Section 60 prohibits negotiation by the payee after payment or satisfaction. This does not affect a holder in due course. By Section 59 the holder is affected only if he acquired the note after dishonour.

3. There is no reference to payment or satisfaction in this section. Section 9 makes a person who has paid consideration a holder in due course", if he became the possessor of the note before the amount mentioned on it became payable.

The language is not, before the amount was paid. u/s 10 payment must be according to the apparent tenor of the instrument. It further provides that there must be good faith and absence of negligence. To my mind where the maker fails to secure the note after discharging it, he cannot be said to have acted in good faith and without negligence". Section 82, which deals with the discharge of the maker, says that the payment must have been made in due course. My conclusion is that as there was no payment in due course as defined in Section 10, the maker is not discharged from liability.

4. I shall now deal with the cases cited. *Gommundun Mohideen Saib v. Oree Meerah Saib* 7 M.H.C.R. 271 was before the Act. Innes, J., relying on *Bartrum v. Caddy* 9 Ad. & E. 275 : 1 P. & D. 207 : 1 W.W. & H.724 : 8 L.J. Q.B 31, held that a discharge against the payee would be a good defence against the endorsee though for value and without notice. In other words, the learned Judge subjected the holder in due course to all the equities subsisting between the maker and the payee. Mr. Justice Kernan was inclined to the view that the equity would apply only to holders of note overdue. In *Bartrum v. Caddy* 9 Ad. & E. 275: 8 L.J.Q.B 31 Lord Denman, C.J. put the case upon the ground that 55 George III, Chapter 184, expressly prohibited the re-issue of a note by the maker after payment and delivery to him. Patteson, J., also based his decision on the Act of Parliament. This decision is not an authority for the general proposition that payment affects a holder in due course. In *Glasscock v. Balls* 24 Q.B.D. 13 : 59 L.J.Q.B. 51 : 38 W.B 155 Lord Esher, M.R. says: "If a negotiable instrument, remains current, even though it has been paid, there is nothing to prevent a person to whom it has been endorsed for value without knowledge that it has been paid from suing." Referring to *Bartrum's* case 1 P. & D. 207 : 1 W.W. & H.724 : 112 E.R. 1216 the Master of the Rolls said that as the note never came into the hands of the maker and was re-issued by him the case did not apply. The other Lords Justices concurred. The principle applicable to these cases is stated by Colins, L.J. in *Nash v. De Freville* (1900) 2 Q.B. 72 : 82 L.T. 642 : 16 T.L.R. 268 thus: "it resolves itself into a simple question, and may be decided in accordance with the familiar principle laid down in *Lickbarrow v. Mason* 2 T.R. 63 namely, "That wherever one of two innocent persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it." " It is on this principle, the sections of the Act to which I referred are based. In this case, it is the act of the maker in having left the note with the payee that enabled the latter to endorse it to the plaintiff. Therefore the maker must suffer the consequences of his carelessness. In *Harry Van Ingen v. Dhunna Lall Lallah* 5 M.k 108 which was also a decision before the Act, a distinction is drawn between on-demand notes which have become overdue and those which have not matured. The learned Judges, of whom Mr. Justice Innes was one, followed the dictum in *Commundun Mohideen Saib v. Oree Meerah Saib* 7 M.H.C.R. 271 and pointed out that before a note can be said to be overdue there must have been a demand. See also 9 M W 15. Mr. Natesa Sastriar relied on this observation and contended that the endorsement of payments on the back of the note is evidence of a

previous demand. I doubt very much whether after the Act knowledge on the part of the endorsee of a demand by the payee "would subject him to the equities subsisting between the latter and the maker.

5. At any rate I am not prepared to extend by implication the fiction of a demand, because certain payments are entered on the back of the note. The usual presumption would be that no more than what has been entered has been paid by the maker.

6. I am, therefore, of opinion that payment by the maker will not be a defence against a holder in due course. The other defence leads to the inference that the plaintiff is not a holder in due course. But that issue has not been raised. The Subordinate Judge will now try the issue, whether the plaintiff is a holder in due course. The case is remanded to him. Costs to abide the result.