

(1999) 03 AP CK 0041
In the Andhra Pradesh High Court
Case No : Writ Petition No. 4628 of 1999

V.A. Noori

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 08-03-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21

Negotiable Instruments Act, 1881 (NI) — Section 138, 19, 5, 6

Citation : (1999) 2 ALD 598 : (1999) 2 ALT 275 : (1999) 1 APLJ 395 : (1999) 98 CompCas 38

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Mr. Narayana Rao, for the Appellant; Government Pleader for GAD, for the Respondent

Judgement

1. The petitioner is the accused No.3 in CC No.2125 of 1998 on the file of XXIII Metropolitan Magistrate Court at Nampally, Hyderabad, charged for the offence u/s 138 of the Negotiable Instrument Act, 1881 (for short "the Act").

2. In this writ petition, the petitioner has sought for Writ of Mandamus directing the respondents not to implement Section 138 of the Act and to declare Section 138 of the Act as null and void.

3. Although several contentions are raised in the affidavit filed in support of the writ petition, the learned Counsel for the petitioner did not press those contentions into service, obviously realising the futility of those contentions for assailing the constitutional validity of Section 138 of the Act. The only contention of the learned Counsel is that Section 6 of the Act defines the term "Cheque" to mean a bill of exchange drawn on a specified banker and not expressed to be payable otherwise on demand, and therefore, when a Cheque is not paid on demand, it cannot be said that there is a dis-honour of cheque to bring under the mischief of Section 138 of the Act. This contention is totally misconceived and untenable. Sections 5, 6 and 19 read conjointly together, make it clear that the

holder of a Cheque has a legal right to payment of the money on demand. If the banker dishonours the Cheque under the circumstances envisaged u/s 138 of the Act, it cannot be said that the instrument of Cheque loses its character and it becomes a bill of exchange not payable on demand. The character of a Cheque does not change even after its dishonour by the banker. Therefore, there is no merit in the contention of the learned Counsel for the petitioner that the dishonour of the cheque issued by him by his banker does not come under the mischief of Section 138 of the Act.

4. Adverting to the unconstitutionality of Section 138 of the Act, it may be relevant to note at the threshold that unconstitutionality of a Statute might arise either because the law is in respect of a matter not within the competence of the Legislature or because the matter itself being within its competence, its provisions offend or infringe the fundamental rights. Whether a Statute is constitutional or not is always a question of power, that is, a question whether the Legislature, in the particular case in respect to the subject matter of the Act, the manner in which its object is to be accomplished and the mode of enacting it, has kept within the constitutional limits and observed the constitutional conditions. Although the petitioner has taken the ground that Section 138 is violative of Articles 14, 19 and 21 of the Constitution, the learned Counsel did not argue that point at the time of hearing for admission nor any factual matrix is laid in the affidavit to sustain that ground. Section 138 of the Act does not violate or offend any of the rights guaranteed to the petitioner-citizen under Articles 19 and 21 of the Constitution of India. The contention is misconceived.

5. In the result, the writ petition fails and it is accordingly dismissed. No costs.