

(1916) 08 MAD CK 0046
In the Madras High Court

V.C.T.N. Chidambaram Chettiar

APPELLANT

Vs

Ayyasawmi Thevan

RESPONDENT

Date of Decision : 23-08-1916

Acts Referred:

Paper Currency Act, 1910 — Section 21, 26

Citation : (1917) ILR (Mad) 585

Hon'ble Judges : Oldfield, J;Krishnan, J

Bench : Division Bench

Judgement

Oldfield, J.—The first question referred to us is whether a promissory note payable to a person or order or bearer is illegal and void and

whether the lender can be given a decree for the money in a suit on it.

2. There is no doubt that u/s 26, Paper Currency Act II of 1910, the making of such a note as that referred to is illegal. The argument that, because

it is to order or bearer in the alternative, it cannot be within the mischief of an act, which forbids the making of notes payable to bearer, does not

commend itself. The question then is whether such a note is void or can be the basis of a decree. The material fact is the provision in section of the

Negotiable Instruments Act, that nothing in the Act affects Section 21 of the Indian Paper Currency Act (III of 1871), which is identical with

Section 26, Act II of 1910 above referred to. The consequence is that the various references in the Negotiable Instruments Act to notes payable

to bearer must refer to notes in which a time is fixed for payment and which are not payable on demand, Section 19, so far as it relates to

promissory notes being explicable as fixing the interpretation of those in which no time is specified for payment, without affecting the prohibition

against them contained in the Paper Currency Act. It does not seem to me possible to hold that a suit can be maintained on a document, the making of which has on public grounds been constituted an offence. I would therefore answer the second portion of the District Munsif's first question in the negative.

3. The second question referred to us is whether the lender can be given a decree apart from the note for the money lent upon the note. It is not possible to answer this question without further knowledge of the facts. For it is impossible on the information given by the District Munsif to decide whether there was any obligation apart from the note, the fact that the loan and the note were contemporaneous not being decisive on the point.

Krishnan, J.

4. The Principal District Munsif of Dindigul has, referred to us under Order XLVI, Rule 1 of Act V of 1908, the following two questions for decision, viz.:

(1) Whether a promissory note payable to a person or order or bearer is illegal and void and whether the lender can be given a decree for money in a suit upon it.

(2) If the answer is against the lender, whether he can be given a decree apart from the note for the money lent upon the note and if so for what amount.

5. The decision of the first question turns upon the effect of Section 26 of the Paper Currency Act II of 1910 which provides inter alia that no person in British India shall... make any promissory note... payable to bearer on demand.

6. The object of this provision was to secure to the Government of India the monopoly for the issue and circulation of currency notes which are, in form, promissory notes payable to bearer on demand; and the section therefore interdicts every one from making such an instrument. An instrument so made is clearly one prohibited by law and therefore invalid. It matters not how it was made whether in pursuance of a contract between parties or otherwise: the instrument as such is invalid and no rights can be enforced under it. The questions whether there was a contract

and whether it was itself lawful are irrelevant questions in this connection.

7. It was argued that as the Paper Currency Act itself provides for a penalty u/s 27 for the transgression of the rule in Section 26 and as the

Negotiable Instruments Act refers to promissory notes ""payable to bearer"" in several sections such as Sections 4, 9, 13 and 47, the note itself

should be treated as valid inter parties though it is opposed to Section 26. It is difficult to understand how an instrument the creation of which is

prohibited by law can be held to be valid because there are also specific penalties attached to its creation. The provisions of the Negotiable

Instruments Act cannot be used to control the effect; of Section 26 as that Act expressly provides in Section 1 thereof that nothing in the Act shall

affect Section 21 of the earlier Act, which is now Section 26 of the present Act. Further, promissory notes payable to bearer may be payable on

demand or otherwise than on demand. Section 26 deals only with former kind, when not made by Government. The Negotiable Instruments Act is

a general Act which deals with all the various kinds of negotiable instruments known to law: and the general provisions in it cannot be relied on to

validate instruments which are invalid.

8. It was farther argued that the note in suit did not fall within Section 26 as it was a note payable not only to bearer but to a person or his order

also. This addition can make no difference as the note is still a note payable to bearer on demand. See *Jetha Parkha v. Ramachandra Vithoba* ILR

(1892) Bom. 689 the observations of Farran, J., on the point. The note is therefore within the scope and the mischief of the section and it is invalid

and no suit can be maintained on it as such.

9. Section 120 of the Negotiable Instruments Act was referred to as creating an estoppel. Though the question does not arise on this reference, it

may be observed that this suit is by the payee on a note which is on the face of it illegal and not therefore by ""any holder in due course.

10. I agree that the second question cannot be answered in the present state of the record, as it depends on facts which have not yet been tried

and found. If there is an obligation apart from one under the note itself it may clearly be enforced. The fact that the ""loan and the note are

contemporaneous"" is not conclusive on the non-existence of such obligation. Attention may be drawn to the observations of Srinivasa Ayyangar, J.,

in Shanmuganatha Chettiar v. Srinivasa Ayyar (1916) 4 M.L.W. 27; s.c. 31 M.L.J. 138

11. I therefore agree in answering the first part of question (1) in the affirmative and the second part in the negative understanding it as referring to a decree upon the note itself. I decline to answer the second question.