
(2002) 07 AP CK 0066

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 5416 of 1999

Vinod Baid

APPELLANT

Vs

S.G.K. Oriental Degree College

RESPONDENT

Date of Decision : 09-07-2002

Acts Referred:

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

Citation : (2002) 2 ALD(Cri) 367 : (2002) 2 ALT(Cri) 406 : (2003) CriLJ 810 :
(2003) 2 RCR(Criminal) 522 : (2003) 41 SCL 344

Hon'ble Judges : S.R.K. Prasad, J

Bench : Single Bench

Advocate : Milind G. Gokhale, for the Appellant;

Final Decision : Allowed

Judgement

S.R.K. Prasad, J.—The petitioner invokes the inherent powers of this Court u/s 482 Cr.P.C. to quash the proceedings in C.C. No. 145 of 1998 on the file of V Additional Munsif Magistrate, Guntur.

2. A brief resume of background of facts is necessary. The petitioner is the Chairman of Prudential Capital Markets Limited which is a Non-Banking Finance Company working under the aegis of the Reserve Bank of India and is governed by the Rules and Regulations thereof. In the year 1995, the Company is said to have started accepting Fixed Deposits in lieu of which it promised to give interest at the rate of 15 per cent per annum to all the investors. It appears that due to CRB Capital Market Scam in the year 1997, all the investors in the country lost faith in Non-Banking Finance Companies. As a result, the company decided to stop accepting fresh deposits as well as renewing matured deposits. The Company has closed down nearly 60 of their 90 branches all over the country. Several depositors presented applications u/s 45QA of the Reserve Bank of India Act, 1934 before the Company Law Board, praying for a direction to the Company to make the payments. The Company Law Board is said to have considered the applications filed by the depositors and summoned the Directors

of the company, several depositors and officials of the Reserve Bank of India. After hearing all concerned, the Company Law Board passed a comprehensive order on 27-5-1998. It is stipulated that the amounts will be repaid within a period of 4 1/2 years from the respective dates of maturities of the deposits. It is further stated that the State Bank of India, suddenly withdraw the "At par" facility being extended by it to several NBFCs including the company and when the depositors presented the post-dated cheques for encashment, the same were returned unpaid by SBL 1st respondent is an Educational Institution in Tadikonda. The entire money in the Educational Institution was invested at the instance of President G.Kanakaiah. Rs. 1,00,000 Fixed Deposit receipt was issued in the name of the complainant by the petitioner. The Company issued a cheque for Rs. 16,070 representing the interest payable or agreed to be paid to the 1st respondent. Cheque No. 242461, dated 21-11-1997 and Cheque No. 108182, dated 21-11-1997 for Rs. 1,00,000 and Rs. 16,070 respectively are said to have been presented before State Bank of India, through Indian Overseas Bank, Guntur, for encashment. The Indian Overseas Bank, Guntur, by its memorandum dated 21-1-1998 returned the cheques for want of "insufficient funds". The 1st respondent got issued a notice on 21-1-1998 and the same is said to have been received on 2-2-1998. Thereafter, he presented the complaint which has been numbered as C.C. No. 145/98.

3. Aggrieved by the same, the petitioner representing the Company filed the Criminal Petition.

4. The learned counsel for the petitioner assails the proceedings on the ground that the document issued is not a cheque and it is only a demand warrant. It is also contended that "cheque" is defined u/s 6 of N.I. Act and demand warrant does not come within the said definition. The learned Public Prosecutor contends that in the complaint the word "cheque" has been used. Therefore, it must be taken as "cheque" only.

5. Adverting to the said contentions, "cheque" is defined u/s 6 of N.I. Act. It reads as follows :

Section 6 Cheque : A "Cheque" is bill of exchange drawn on a banker payable on demand.

Bill of Exchange is defined in Section 5 of N.I. Act. It reads as follows :

Section 5 : Bill of Exchange: A Bill of Exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order, of a certain person or to the bearer of the instrument.

A promise or order to pay is not "conditional" within the meaning of this section and Section 4, by reason of the time for payment of the amount of in any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation

of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain" within the meaning of this section and Section 4 although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person" within the meaning of this section and Section 4 although he is misnamed or designated by description only".

6. The only point that has to be considered is whether the refund order. Fixed Deposit receipt or interest warrant will come under the definition of cheque and whether it constitute an offence. It is observed in the book "Introduction to Negotiable Instruments" by James Mc Loughlin in 1975 edition, at page : 130 as follows :

"A customer may authorize his banker to make payment from his account by instruments which are not cheques. These may be valid orders, and the banker may be in breach of contract with his customer if he fails to comply, but they will not have the characteristics of negotiable instruments . . .

Commentary about the definition of a cheque u/s 6 of N.I. Act reads as follows :--

The touchstone by which a cheque is that it must be payable instantly on demand. This is brought out in this section by stating negatively that a cheque cannot be expressed to be payable otherwise than on demand. A bill is payable on demand when it is expressed to be payable on demand, or at sight or on presentment or when no time for payment specified in it. A cheque cannot be drawn on a banker payable at a future day, that is by dating the cheque say the first April 1989, and be payable on a future day named, say the 10th April, 1989. However, a cheque can be made payable on a future day be post-dating it. The language of this section does not seem to require that a cheque must be drawn by a customer of the drawee bank though for obvious reasons it is so.

Characteristics of a cheque have been clearly mentioned in 16th Edition, at page : 117 of Negotiable Instruments Act by Bhashyam and Adiga"s. It reads as follows :

Characteristics of a cheque: It is somewhat inaccurate to describe a cheque as a bill of exchange payable on demand. While a cheque has many features in common with bills and is in many respects governed by the same rules and principle and is often taken to be included in the general term "bill" in enactments, it has several peculiar characteristics and differs from bills in some respects. Cheques are compared with and distinguished from bills as follows :

(a) A cheque is always drawn on bank or a banker, and is payable immediately

on demand without any days of grace. A Bill of Exchange is a negotiable instrument in writing containing an instruction to a third party to pay a stated sum of money at a designated future date or on demand. A "Cheque" on the other hand, is a bill of exchange drawn on a bank by the holder of an account payable on demand. Thus, a "cheque" u/s 6 of the Act is also a bill of exchange but it is drawn on a banker and is payable on demand. It is, thus, obvious that even though a bill of exchange is drawn on a banker, if it is not payable on demand, it is not a cheque. Therefore, an order issued by the District Board Engineer on the Government Treasury is not a cheque, as the Government is not a bank carrying on business for profit. It has been held that an instrument is not precluded from being a cheque by reason of the fact that it is drawn by a banker on himself. But in the above case no reference is made to the decision of the House of Lords in *Capital and Counties Bank V. Gordon* where it was decided that a draft drawn by the branch bank on its head office was not a cheque. By a later amendment to the Bills of Exchange Act the legislature preferred to confirm the law stated by Bailhache, J. in *Ross's* case.

(b) A cheque requires no acceptance apart from prompt payment. It is presented for payment only. Accordingly, there is no privity of contract between the banker and the payee, who cannot, therefore, sue the bank on dishonour.

(c) A cheque is supposed to be drawn upon funds in the hands of the banker.

(d) The drawer of a cheque is not discharged by failure of the holder to present it in due time unless the drawer has sustained damage by the delay. These differences are pointed out in the well-known passage of Parke, CB, in the case of *Ramchurn v. Luchmeechund* A banker's cheque is a peculiar sort of instrument in many respects resembling a bill of exchange, but in some entirely different. A cheque does not require acceptance; in the ordinary course, it is never accepted. It is not intended for circulation, it is given for immediate payment: it is not entitled two days of grace and though strictly speaking, it is an order upon a debtor by a creditor to pay a third person the whole or part of a debt; yet, in the ordinary understanding of persons it is not so considered. It is more like an appropriation of what is stated as ready money in the hands of the banker, and in giving the order to appropriate to a creditor, the person giving the cheque must be considered as the person primarily liable to pay who orders his debt to be paid at a particular place, and as being much in the position of the maker of a promissory note or the acceptor of a bill of exchange payable at a particular place, and not elsewhere, who has no right to insist on immediate presentment at that place.

(e) A cheque is not noted or protested for dishonour and is generally inland; and

(f) In respect of crossed cheques there is protection given to the banker which is peculiar to these instruments."

7. The entire dispute in issue depends upon interpretation to be put on to the document issued. The refund Order or final interest warrant are said to have

been issued towards fixed deposit amount. They are not styled as cheques. There is no mention in the said document to pay the amount "on demand". The main ingredient "payable on demand" is absent in all these documents. They are being issued by the Bank in pursuance of the arrangement and payment is said to have been made. Subsequently, the cheques were dishonoured. Section 138 commences with the words "Where any Cheque drawn by a person on an account maintained by him .. .". Any instrument, Bill of Exchange, or warrants are issued under an arrangement does not strictly fall within the definition of a "cheque" as it is not specifically mentioned in the document that it is payable "on demand". I am of considered opinion that if there is no mention in the document that it is payable on demand, the said document do not fall within the definition of a "cheque" and it is not a cheque. When the said document is not a cheque, the question of Section 138 of N.I. Act does not arise. Merc use of a word "cheque" in the complaint do not make it as a "cheque". In view of the interpretation put on by me, I find that the document, bill of exchange, refund order, and final interest warrant do not constitute cheques within the meaning of Section 138 of N.I. Act. No offence is made out u/s 138 of N.I. Act and the averments made in the complaint do not constitute an offence. I agree with the contention of the learned counsel for the petitioner.

8. To sum up, I find that the alleged document issued do not constitute a "cheque" and no offence is made out u/s 138 of N.I. Act as the documents are issued in pursuance of the directions of Reserve Bank of India. As the complaint do not constitute an offence u/s 138 of N.I. Act, the proceedings are quashed against the petitioner. In so far as the Company is concerned, the trial shall go on.

9. In the result, this Criminal Petition is allowed to the extent indicated above.