

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

CRIMINAL APPEAL No.263 OF 2007

CONNECTED WITH

CRIMINAL APPEAL No.264 OF 2007

CRIMINAL APPEAL No.265 OF 2007 DATED:07-09-2016

Sri. S. Madhava Reddy, Son of Narayana Reddy Vs. Smt. Mangamma, Wife of B. Vemareddy,

JUDGMENT

Heard the learned Counsel for the appellants.

2. The peculiar facts and circumstances of these cases are that the present appellants were the complainants in three cases against the very same respondent-accused, alleging an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (Hereinafter referred to as the ' NI Act ', for brevity).

3. Insofar as the appeal in Cri.A No.263/2007, is concerned, it is contended that in the month of December 2003, the respondent had received a hand loan from the petitioner in a sum of Rs.5.00 lakh and to discharge the said liability, the respondent had issued a cheque in favour of the appellant. It is claimed that the cheque, when presented for encashment, through his banker, came to be dishonoured for the reason that the payment was stopped by the drawer. Since the respondent had failed to keep up the promise to repay the appellant, a legal notice was issued and a complaint was filed thereof.

4. Similarly, in the connected appeals, it was a similar situation, where the amounts involved were Rs.5,00,000/-and Rs.5,50,000/-. Though the cases were decided by independent judgments, the reasoning was identical, in that, the findings were in favour of the complainant. The trial court came to a conclusion that the so-called cheque issued did not answer to the description of a cheque since the same was drawn on a co-operative society, which had issued a document styled as a debit voucher and therefore, there was doubt expressed by the court below as to whether the document could be considered as a cheque. And on that ground alone, the respondent was acquitted. The same was carried in appeal before a learned Single Judge of this court, before whom the appeal was contested. The learned Single Judge had referred the matter by order dated 12.1.2010, to a division bench, raising the following questions:

"i) Whether the definition of " Banker " under Section 3 of the N.I.Act would include a Credit Co operative Society carrying on banking business in contravention of Section 56 of the B.R.Act, 1949?

ii) Whether an instrument styled as ' Cheque ' drawn by a person on the account held by him in a Credit Co-operative Society carrying on Banking business contrary to the provisions of Section 56 of the B.R.Act can be

termed as a ' Cheque ' issued on an account held by him with a Banker as occurring in Section 138 of the N.I.Act? "

The division bench by its judgment dated 20.6.2011, in these criminal appeals, while placing reliance on a decision of the apex court in the case of Apex Co-operative Bank of Urban Bank of Maharashtra & Goa Ltd. Vs. Maharashtra State Cooperative Bank Ltd. and others and connected cases, (2003) 11 SCC 66, came to the conclusion that the definition of " banker " under the Negotiable Instruments Act, 1881 would include a credit co-operative society carrying on banking business in contravention of Section 22 of the Banking Regulation Act, 1949 (Hereinafter referred to as the ' BR Act ', for brevity), until action is taken by the RBI by initiating a complaint according to Section 47 of the BR Act. Even after a complaint is made under section 47 of the BR Act, initiation of such complaint will not invalidate the previous transactions and the drawer of a cheque would not be relieved of his obligations under the law.

Secondly, it was held that the instrument styled as " cheque " drawn by a person on the account held by him in a credit co-operative society carrying on banking business contrary to the provisions of section 46 (4) of the BR Act can be termed as a " cheque " issued on an account held by him with a banker as occurring in section 138 of the NI Act and in case of dishonour of cheque, all the consequences under section 138 of the NI Act would follow subject to fulfillment of other conditions. The initiation of complaint by the RBI in contravention of the provisions of section 46 (4) of the BR Act would not enable the drawer of the cheque to plead the invalidity of the cheque drawn by him.

The same was again challenged by the respondent before the apex court in a petition for Special Leave to Appeal (CRL) Nos.7377-79/2011 with Criminal Miscellaneous Petition No.19296-98/2011.The same was dismissed by order dated 24.7.2014.It is thereafter that these appeals are now listed for hearing.

5. Since the only question, whether the trial court was justified in holding that the document under which the appellants were claiming, could not be construed as a cheque, having been answered in favour of the appellants, the appeals are accordingly allowed. In the result, the respondent is found guilty of an offence punishable under Section 138 of the NI Act. The respondent is sentenced to pay a fine of Rs.8,50,000/-to the appellant in CrI.A 263/2007 and Rs.8,00,000/-to the appellant in CrI.A.264/2007 and Rs.8,30,000/-to the appellant in CrI.A.265/2007 The same shall be paid as compensation to the appellants under Section 357 of the Code of Criminal Procedure, 1973. In default of payment of fine, the respondent shall serve the sentence of simple imprisonment for a period of two months, each.