

HIGH COURT OF KARNATAKA

Date of Decision: March 7, 2024.

Bench: JUSTICE ANIL B KATTI

CRIMINAL REVISION PETITION NO. 100079 OF 2016 (397)

1. KRISHNA AUTOMATION & SOFTWARE SOLUTION PRIVATE LIMITED, BENGALURU.
2. KRISHNAMURTHY UDUPA, DIRECTOR, KRISHNA AUTOMATION & SOFTWARE SOLUTION PRIVATE LIMITED, BENGALURU.
3. RAKSHA, DIRECTOR, KRISHNA AUTOMATION & SOFTWARE SOLUTION PRIVATE LIMITED, BENGALURU.
.....PETITIONERS

Versus

BALACHANDRA S. MULE, CLASS-I CIVIL CONTRACTOR, HAVERI.

RESPONDENT

Legislation:

Sections 138, 141(1)(b), 87, 118, 139 of the Negotiable Instruments Act, 1881

Section 25(3) of the Indian Contract Act, 1872

Section 87 of the Negotiable Instruments Act, 1881

Subject: Criminal revision petition against the first appellate court's judgment confirming the trial court's conviction for an offence under Section 138 of the Negotiable Instruments Act involving a dishonored cheque of Rs. 5 lakhs.

Headnotes:

Negotiable Instruments Act – Dishonor of Cheque – Section 138 – High Court evaluated the legality of the conviction under Section 138 of the Negotiable Instruments Act, concerning a cheque dishonoured due to 'payment stopped by drawer'. The court scrutinized the evidence regarding the issuance of the

cheque, the service of the demand notice, and the statutory presumptions under Sections 118 and 139 of the N.I. Act. [Para 4-7, 9-11, 14-17, 21-25]

Statutory Presumption under Sections 118 and 139 of N.I. Act – held – the presumption is that a cheque is issued for lawful discharge of debt, placing the burden on the drawer to prove otherwise. The Court relied on Apex Court precedents to affirm the statutory presumption in favor of the complainant when the issuance of the cheque and the drawer's signature are established. [Para 7-8, 25]

Defenses against Cheque Dishonour – examined – The court addressed various defenses raised by the accused, including non-compliance with Section 138(b) of the N.I. Act, alleged theft and misuse of cheques, inconsistency in evidence, material alteration of the cheque, and the limitation claim. The Court systematically negated each defense based on the evidence on record. [Para 10, 12-14, 15-17, 18-19, 20-21, 24]

Limitation and Time-Barred Debt – discussed – The Court, referring to Apex Court and Bombay High Court judgments, held that a cheque issued for a time-barred debt falls within Section 25(3) of the Indian Contract Act and creates an enforceable contract, thereby fulfilling the criteria of a legally enforceable debt under Section 138 of the N.I. Act. [Para 21-24]

Decision – Upholding Lower Courts' Judgment – The High Court affirmed the lower courts' judgments, holding the accused liable under Section 138 of the Negotiable Instruments Act. The accused's defenses were found to be insufficient to overturn the statutory presumptions favoring the complainant. [Para 25]

Revision petition dismissed; conviction upheld.

Referred Cases:

- APS Forex Services Pvt. Ltd. Vs. Shakti International Fashion Linkers and others, AIR 2020 SC 945

- P. Rasiya vs. Abdul Nazer and another, 2022 SCC OnLine SC 1131
- A.V. Murthy Vs. B.S.Nagabasavanna, (2002) 2 SCC 642
- Dinesh B. Chokshi Vs. Rahul Vasudeo Bhatt, 2013 (2) Mh.L.J.
- M.Shantilal & Co. Vs. Abbaji Maruti Jadhav and Another, 2019 SCC OnLine Bom 4356

Representing Advocates:

For Petitioners: Sri. K. Suresh Kumar and Pranav Ravi

For Respondent: Sri Vijayendra Bhimakkanavar

ORDER

Revision petitioners/ accused Nos.1 to 3 feeling aggrieved by judgment of first appellate Court on the file of I Addl. District & Sessions Judge, Haveri, in Criminal Appeal No.95/2015 dated 27.02.2016 in confirming the judgment of the trial Court on the file of Addl. Civil Judge & JMFC, Haveri in C.C. No. 642/2005 dated 03.10.2015, preferred this revision petition.

2. Parties to the revision petition are referred with their ranks as assigned in the trial court, for the sake of convenience.
3. Heard arguments of both sides.
4. After hearing arguments of both sides and on perusal of trial court records, so also the impugned judgment under appeal, the following points arise for consideration.
 - i) *Whether the impugned judgment of the first appellate Court under revision in confirming the judgment of conviction and order of sentence passed by the trial court for the offence punishable U/s 138 of Negotiable Instruments Act, is perverse, capricious and legally not sustainable?*
 - ii) *Whether interference of this Court is required?*
5. On careful perusal of the material evidence placed on record, it would go to show that complainant is a Class-1 Civil Contractor and permanent resident of Byadagi. Accused No.1 is the Private Limited Company, accused Nos.2 and 3 are husband and wife and are the Directors of accused No.1 Company.

Accused Nos.2 and 3 are doing software business through accused No.1 Company. On 13.05.2002, accused Nos.2 and 3 visited the complainant at his place and sought financial assistance of Rs. 5 lakhs for the purpose of improving the business of accused No.1 Company. Complainant has paid the said amount of Rs.5 lakhs and accused have agreed to repay the same within six months. On 12.08.2005 complainant demanded repayment of his money. Accused Nos.2 and 3 issued cheque bearing No. 430659 dated 16.08.2005 for Rs.5 lakhs drawn on Canara Bank, V.V. Puram Branch, BengaluruEx.P.1. Complainant presented the said cheque through his banker, State Bank of India, Haveri branch, on 19.08.2005. The counterfoil challan of State Bank of India is produced at Ex.P.9. The said cheque issued by accused Nos.1 and 2 came to be dishonoured with bank endorsement as “payment stopped by drawer” dated 28.08.2005-Ex.P.2. The banker of complainant given intimation of Ex.P.2 vide letter dated 19.09.2005Ex.P.10. Complainant issued demand notice dated 01.10.2005 through registered post and under certificate of posting-Ex.P.3. The demand notice is duly served to accused vide postal acknowledgement Exs.P.4 to P.6 on 04.10.2005. Accused have replied to the demand notice dated 20.10.2005-Ex.P.12 denying their liability to pay the amount under cheque-Ex.P.1. Complainant has filed the complaint on 24.10.2005-Ex.P.7.

6. If the aforementioned documents are perused and appreciated with the oral testimony of PW1, then it would go to show that complainant has complied all the necessary legal requirements in terms of Section 138 (a) to (c) of the Negotiable Instruments Act, 1881 (hereinafter referred as ‘N.I.Act’ for the sake of brevity). Complainant has filed the complaint within a period of one month in terms of Section 141(1)(b) of the N.I. Act. Therefore statutory presumption in terms of Sec.118 and 139 of N.I. Act will have to be drawn in favour of complainant holding that the cheque was issued by accused for lawful discharge of debt.
7. In this context of the matter, it is useful to refer the judgment of Hon'ble Apex Court in ***APS Forex Services Pvt. Ltd. Vs. Shakti International Fashion Linkers and others*** reported in ***AIR 2020 SC 945***, wherein it has been observed and held that once the issuance and signature on cheque is admitted, there is always a presumption in favour of complainant that there

exist legally enforceable debt or liability. Plea by accused that cheque was given in view of security and same has been misused by complainant is not tenable.

8. It is also profitable to refer another judgment of Hon'ble Apex Court in ***P. Rasiya vs. Abdul Nazer and another*** reported in **2022 SCC OnLine SC 1131**, wherein it has been observed and held that:-

" Once the initial burden is discharged by the complainant that the cheque was issued by the accused and signature of accused on the cheque is not disputed, then in that case, the onus will shift upon the accused to prove the contrary that the cheque was not for discharge of any debt or other liability. The presumption under Section 139 of N.I. Act is statutory presumption and thereafter, once it is presumed that the cheque is issued in whole or in part of any debt or other liability which is in favour of the complainant/holder of the cheque, in that case it is for the accused to prove the contrary."

In view of the principles enunciated in the aforementioned two judgments of Hon'ble Apex Court, it is evident that when once issuance of cheque with signature of accused on the account maintained by him is admitted or proved then statutory presumption in terms of Section 118 and 139 of N.I. Act will have to be drawn.

9. It is now upto the accused to place rebuttal evidence to displace the statutory presumption available in favour of complainant. In the present case, accused apart from relying on the materials produced by the complainant, also relied on the evidence of DW1 and documents at Exs.D.1 to D.12. Whether the said rebuttal evidence placed on record by the accused would be sufficient to displace the statutory presumption available in favour of complainant or not is to be decided by appreciating the evidence on record.
10. In the present case, in view of the reply of accused Ex.P.12 to the demand notice issued by the complainant Ex.P.3, the material evidence brought on record, the accused have made following specific defences.
- i) There is non compliance of Section 138(b) of N.I. Act; ii) Cheques were stolen from the office premises of accused and one of such cheque has been misused in this case;

- iii) There is no consistent evidence regarding date and place of lending money;
- iv) There is material alteration of cheque which renders the instrument-Ex.P.1 as void in terms of Section 87 of N.I. Act;
- v) The claim of complainant is barred by limitation.

The aforementioned defences of accused will have to be appreciated on the strength of the material evidence placed on record.

11. Accused No.2-Krishnamurthy Udupa got himself examined as DW1 and has deposed for himself and on behalf of his wife to the effect that complainant is not known to them and they have not obtained any loan from the complainant. There was no transaction between the accused and complainant as there is no any document evidencing the said transaction. On 18.10.2003, a relative of the complainant-Vigneshwara Aital had come for their house warming ceremony and he has stolen the cheques kept in the locker of the house. On coming to know of the said fact, he filed complaint before Chamarajpet Police Station on 08.01.2004, Ex.D.1. Accordingly, he has given instructions to the bank to stop payment of the cheques stolen from the house. He came to know about misuse of one such stolen cheque after receipt of demand notice from complainant being misused to file this false case. Copy of complaint is produced at Ex.D.2 and the Police endorsement is at Ex.D.3. He has also filed complaint-Ex.D.4, the same was questioned before the High Court. On the complaint of accused, Chamarajpet Police submitted 'B' report. Other four cheque bounce cases filed by Vigneshwara Aital came to be dismissed. The said Vigneshwara Aital is the relative of complainant. Exs.D.5 and D.6 are the certified copy of deposition and the complaint. Complainant and Vigneshwara Aital colluded with each other and by misusing the cheque, has filed this false case.
12. Accused Nos.2 and 3 have not denied their signature and seal of the Company of accused no.1 appearing on Ex.P.1, further the said cheque came to be dishonoured on their instruction to the bank to stop payment. The first defence of the accused is that there is non compliance of Section 138(b) of the N.I. Act. In terms of Section 138(b) of the N.I. Act, "*the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the*

drawer of the cheque, (within thirty days) of the receipt of information by him from the bank regarding the return of the cheque as unpaid.”

13. Learned counsel for the accused has argued that dishonour of cheque as payment stopped by the drawer was issued by Canara Bank on 28.08.2005-Ex.P.2. It is from the said date, period of 30 days, demand notice will have to be issued in terms of Section 138(b) of N.I. Act. The period of 30 days will come to an end on 28.09.2005. The demand notice issued by the complainant on 01.10.2005-Ex.P.3 is beyond the period of 30 days envisaged in terms of Section 138(b) of the Act. Therefore, complainant cannot maintain the complaint for penal action in terms of Section 138 of N.I. Act. The courts below have committed serious error in calculating the period of 30 days from the date of bank intimation on 19.09.2005-Ex.P.10.

14. On perusal of counterfoil of the challan-Ex.P.9, it would go to show that complainant has presented cheque-Ex.P.1 through his Banker-State Bank of India, on 19.08.2005. The banker of accused given intimation dated 28.08.2005-Ex.P.2 by dishonouring cheque as “payment stopped by drawer”. In terms of Sec. 138(b) of the N.I. Act, the period of 30 days will have to be calculated from the date of receipt of information from the bank regarding return of the cheque as unpaid. The banker of complainant-State Bank of India, given intimation to the complainant regarding return of cheque as unpaid dated 19.09.2005-Ex.P.10. In terms of Sec. 138(b) of N.I. Act, the period of 30 days has to be calculated from the said date. If the same is calculated, then the demand notice issued by the complainant on 01.10.2005-Ex.P.3 is well within the period of 30 days from the date of receipt of information from the bank regarding return of the cheque as unpaid. Therefore, the contention of accused that there is non compliance of Sec.138(b) cannot be legally sustained.

15. The second contention of accused is that cheques were stolen from the office premises of accused which was addressed during the course of arguments by counsel for accused and also the same is reiterated in the written arguments. However, evidence of DW1 is quite contrary, since he has deposed to the effect that one Vigneshwar Aital, a relative of the complainant had attended to their house warming ceremony and it is at that time the said Vigneshwar Aital has stolen the signed cheques kept in the locker of the house. Accused has produced documents-Ex.D.3 dated 08.01.2004 before

Chamarajpet Police Station stating that they have lost bundle of papers containing official documents and some cheques.

16. On 04.10.2005 another complaint was filed to the very same Chamarajpet Police Station in continuation of earlier complaint dated 08.01.2004-Ex.D.3 against Balachandra S. Mule, who is the complainant in this cause for misusing one of the stolen cheque-Ex.P.1. The said complaint is filed by the accused the day on which the demand notice was served to accused on 04.10.2005. Accused also gave particulars of lost cheque on 12.04.2005. However, in the aforementioned documents, it has never been stated that either Vigneshwar Aital stolen cheque from the locker in the house when he attended house warming ceremony nor stating that cheques were stolen from the office premises of accused.

17. Indisputably, Police have filed 'B' report on the complaint filed by the accused regarding loss of cheques and misusing of one such cheque by the complainant. Accused also produced documents at Exs.D.4 to D.6 regarding the proceedings against Vigneshwar Aital. There is no any evidence placed on record by accused as to how the said Vigneshwar Aital is connected to the transaction between the complainant and the accused and the issuance of cheque-Ex.P.1. The inconsistent evidence of accused regarding the manner in which cheques were stolen either from the house of accused when they were kept in the house locker or from the office premises of accused. The said places are secured places under the control of accused and nobody can enter the said place without the consent and knowledge of accused. However, no any action was taken immediately after the alleged stolen cheque. The filing of cheque bounce cases against Vigneshwar Aital and dismissal of the same has nothing to do with the transaction claimed by the complainant between himself and accused. The claim of accused that complainant came in possession of stolen cheque either from his house or from the office premises through Vigneshwar Aital has not been established by the accused. Therefore, the second contention of accused that one of stolen cheque in collusion with Vigneshwar Aital, was misused to file this false case, cannot be legally sustained.

18. The third contention is that the date of lending and place not consistent. It is the contention of accused that PW1 during the cross

examination has stated that he has paid the money in January, 2003 which is against the complaint averments that he has paid money on 13.05.2002. Complainant has produced his bank account extract-Ex.P.11. Complainant has used money of Rs.5,01,000/- to draw demand drafts and the said money has been paid by the complainant. The extract of bank account-Ex.P.11 would go to show that complainant has sufficient balance in his account to pay money to accused. Therefore, mere inconsistency in the cross examination of PW1 cannot be a ground to hold that cheque-Ex.P.1 was not issued for lawful discharge of debt. Therefore, the said contention also cannot be legally sustained.

19. The 4th contention of accused is that there is material alteration of cheque. In terms of Section 87 of the N.I. Act any material alteration of a negotiable instrument render the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties.

20. On careful perusal of the cheque Ex.P.1 it would go to show that there is no any material alteration in the cheque. The space is left blank for writing the date and month and the first two figures of the year are printed as “19—”. The said year “19—” printed in Ex.P.1 has not been scored out nor it is altered to make an action within the ambit of Sec.138 of N.I. Act. The date, month and year of the issuance of cheque is written before the printed year “19—”. Therefore, when the accused has failed to demonstrate that the material alteration was made in the cheque Ex.P.1 only to bring penal action within the ambit of Sec. 138 of N.I. Act, the contention of the accused that there is material alteration, cannot be legally sustained and in fact there is no any material alteration in the cheque-Ex.P.1. Therefore, the said contention also cannot be legally sustained.

21. The last contention of the accused is that the claim of complainant covered under the cheque-Ex.P.1 is barred by limitation. According to the complainant, he has paid the money to the accused on 13.05.2002. The cheque in question Ex.P.1 is dated 16.08.2005 which is after lapse of more than three years, i.e., three years 2 months and 30 days. Therefore, it cannot be said that accused have issued cheque-Ex.P.1 for lawful discharge of debt.

22. In this context of the matter, it is profitable to refer the judgment of the Hon'ble Apex Court in **A.V. Murthy Vs. B.S.Nagabasavanna** reported in **(2002) 2 SCC 642** wherein it has been observed and held as under:

“In view of Sections 118 and 139 of the Negotiable Instruments Act, Section 25(3) of the Contract Act, 1872 and in the presence of a documentary evidence which might amount to acknowledgement reviving the period of limitation, the present case was not one where the cheque was drawn in respect of a debt or liability, which was completely barred from being enforced under law. However, these are matters to be agitated before the Magistrate by way of defence of the respondent. But at this stage of the proceedings, to say that the cheque drawn by the respondent was in respect of a debt or liability which was not legally enforceable, was clearly illegal and erroneous.”

The Division Bench of the Hon'ble Bombay High Court had an occasion to deal with the issue of time barred debt in **Dinesh B. Chokshi Vs. Rahul Vasudeo Bhatt** reported in **2013 (2) Mh.L.J.** wherein the matter was referred to Division for deciding two questions formulated by the learned Single Judge under his judgment and order dated 23.12.2008, which reads as under:

“(i) Does the issuance of a cheque in repayment of a time barred debt amount to a written promise to pay the said debt within the meaning of section 25(3) of the Indian Contract Act, 1872?

(ii) If it amounts to such a promise, does such a promise, by itself, create and legally enforceable debt or other liability as contemplated by section 138 of the Negotiable Instruments Act, 1881?”

The Division Bench of Hon'ble Bombay High Court after having considered the provisions of N.I. Act, has answered the reference in paragraph Nos.20 and 21, which read as follows: *“20. While recording our answer to the first question, we have already held that a cheque issued for discharge of a debt which is barred by law of limitation is itself a promise within the meaning of sub-section (3) of section 25 of the Contract Act. A promise is an agreement and such promise which is covered by section 25(3) of the Contract Act becomes enforceable contract provided that the same is not otherwise void under the Contract Act.*

21. *Therefore, while answering second question, we are specifically dealing with a case of promise created by a cheque issued for discharge of a time barred debt or liability. Once it is held that a cheque drawn for discharge of a time barred debt creates a promise which becomes enforceable contract, it cannot be said that the cheque is drawn in discharge of debt or a liability which is not legally enforceable. The promise in the form of a cheque drawn in discharge of a time barred debt or liability becomes enforceable by virtue of sub-section (3) of section 25 of the Contract Act. Thus, such cheque becomes a cheque drawn in discharge of a legally enforceable debt as contemplated by the explanation to Section 138 of the said Act of 1881. Therefore, even the second question will have to be answered in the affirmative.”*

23. In the subsequent judgment of Hon’ble Bombay High Court in ***M.Shantilal & Co. Vs. Abbaji Maruti Jadhav and Another*** reported in **2019 SCC OnLine Bom 4356**, wherein by referring a judgment of Division Bench of Bombay High Court in ***Dinesh B. Chokshi*** (supra), held in paragraph No. as under:

“In the circumstances, once a cheque is drawn for discharge of a time barred debt, it creates a promise which becomes an enforceable contract and therefore, it cannot be said that the cheque is drawn in discharge of debt or liability which is not legally enforceable. Therefore, I am satisfied that the impugned judgment dated 16.9.1998 has to be set aside and is hereby set aside. The matter is remanded to the trial court to decide, based on the evidence already recorded, whether the complainant has proved the ingredients of offence punishable under Section 138 of the Negotiable Instruments Act, 1881.”

24. Therefore, in view of the principles enunciated in the aforementioned judgments, it is evident that issuance of a cheque on time barred debt is enforceable in terms of Section 25(3) of the Indian Contract Act and such debt is legally enforceable debt within the meaning of Sec.138 of the N.I. Act. Thus, the last contention of learned counsel for accused that claim of complainant is barred by limitation and as such the cheque in question-Ex.P.1 was not issued for legally enforceable debt, cannot be legally sustained.

25. The Courts below have rightly appreciated the oral and documentary evidence placed on record and justified in recording findings that complainant has proved that accused have issued cheque in question Ex.P.1 for lawful

discharge of debt. The courts below were also further justified in holding that the accused have failed to probabalize their defence.

Therefore presumption in terms of Section 118 and 139 of N.I. Act continues to operate in favour of the complainant. The said findings recorded by both the Courts below is based on the material evidence placed on record and the same does not call for any interference by this Court. Consequently, proceed to pass the following order.

ORDER

Revision petition filed by the accused is hereby dismissed as devoid of merits.

Registry is directed to transmit the records to the trial court with a copy of this order.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.