

Deceased Father's Dues Qualify As 'Legally Enforceable Debt', Complaint U/S 138 NI Act Against Son Maintainable: Karnataka High Court

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

K. NATARAJAN; J.

CRIMINAL APPEAL NO.725 OF 2011; 2 January, 2023

PRASAD RAYKAR versus B.T. Dinesh

Appellant by Anand Shetty, advocate for Rajashekar, advocate

Respondent by R. Nagendra Naik, advocate

J U D G M E N T

This appeal is filed by the appellant-complainant under Section 378 of Cr.P.C. for setting aside the judgment of acquittal passed by the Second Additional District and Sessions Judge, Davanagere in CrI.A.No.140/2010 dated 07.04.2011 and to confirm the judgment of conviction and sentence passed by the Principal Senior Civil Judge and CJM, Davanagere in C.C.No.1303/2009 dated 18.10.2010.

2. Heard the arguments of learned counsel for the appellant and learned counsel for the respondent.

3. The case of the appellant before the trial Court is that he has filed a private complaint under Section 200 of Cr.P.C. against the respondent-accused for the offence punishable under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (for short 'N.I. Act') alleging that the accused and complainant are known to each other. The father of the respondent-accused - Bharamappa said to be borrowed Rs.2,60,000/- from the complainant appellant on 07.03.2003 for his business and his family necessities and agreed to pay 2% interest per month by executing the on-demand promissory note in favour of the complainant. In the meantime, the father of the accused - Bharamappa died leaving behind his son-accused as a legal heir i.e., prior to filing of the private complaint. On the death of Bharamappa, the complainant asked the accused for repayment of the loan amount and the accused requested for sometime. But he has paid Rs.10,000/- to the complainant on 10.06.2005 and the complainant asked the accused to clear the dues of his father. Later, the interest as well as principal amount was calculated for Rs.4,50,000/- and the accused said to be issued two cheques bearing Nos.571677 and 571679 drawn on Vijaya Bank, Davanagere Branch for the sum of Rs.2,25,000/- each dated 07.06.2006 and 07.07.2006 respectively. The cheques were presented for encashment which came to be dishonored as the account was closed. A notice also served on the accused, but, he did not pay the amount. Hence, the complaint came to be filed before the Magistrate. After appearance of the respondent accused, plea was recorded, he claimed to be tried and on behalf of the complainant, he has examined himself as PW.1 and got marked 14 documents. Statement of the accused under Section 313 of Cr.P.C. was recorded and his case is one of the total denial and he has not led any evidence. After hearing the arguments, the trial Court found the accused guilty and convicted and sentenced to pay Rs.4,95,000/- and in default, he shall undergo simple imprisonment for one year. Out of which, Rs.4,50,000/- payable to the complainant as compensation under Section 357 of Cr.P.C.

4. The judgment of conviction has been challenged by the accused before the Sessions Judge. The Sessions Judge being the Appellate Court allowed the appeal and set aside

the conviction and sentence passed by the trial Court and acquitted the accused. Hence, the complainant is before this Court by way of appeal.

5. The learned counsel for the complainant has contended that the judgment of the First Appellate Court is erroneous and also not correct. The accused himself has undertaken to discharge the loan borrowed by his father, but, he has paid Rs.10,000/- by cash. Subsequently, he has issued two cheques, but the First Appellate Court failed to consider the same and set aside the judgment of conviction and sentence on the ground that there is no legally enforceable debt which is not correct. Therefore, prayed for setting aside the judgment of acquittal and confirm the conviction and sentence passed by the trial Court.

6. Per contra, the respondent counsel has contended that there is no legally enforceable debt payable by the accused in order to file complaint against him. The debt is time barred. Therefore, the learned counsel supported the judgment passed by the First Appellate Court and hence, prayed for dismissing the appeal.

7. Having heard the arguments of learned counsel for the parties and on perusal of the records, the point that arises for my consideration are:

1) Whether the complainant is able to prove that there is legally enforceable debt payable by the respondent- accused ?

2) Whether the judgment of the First Appellate Court is liable to be set aside ?

8. It is not in dispute that the father of the accused borrowed loan from the complainant and the father of the accused died prior to filing of the private complaint. It is alleged that the complainant approached the accused to repay the loan, where the accused undertaken to repay the loan and he said to be issued two cheques. The main contention of the counsel for the accused is that there is no legally enforceable debt payable by him and second contention is time bound debt which cannot be enforceable. In this regard, the learned counsel for the appellant brought to the notice of this Court that as per Section 29 of the N.I. Act, the legal representative of the deceased person is liable to discharge the liability of the father. The learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **ICDS LTD. vs. BEENA SHABEER AND ANOTHER** reported in **(2002) 6 SCC 426**.

9. On perusal of Section 29 of the N.I. Act, which defines as follows:

"29. Liability of legal representative signing

A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such".

10. As per Section 29 of the N.I. Act, the legal representative of the deceased issued a cheque and he is liable personally. That apart, as per the judgment of the Hon'ble Supreme Court in the case of **ICDS LTD.** stated supra, the Hon'ble Supreme Court has upheld the judgment of the trial Court wherein in the said case, a guarantor issued cheque towards payment of the dues outstanding against the principal debtor (hire-purchaser of car in the said case) and the complaint was filed against the guarantor as the cheque issued by the guarantor came to be dishonored. Considering the judgment of the Hon'ble Supreme Court, where, in this case, the accused is none other than the son of the deceased-father who borrowed the loan from the complainant and the accused agreed to repay the same and he has issued the cheque. Such being the case, as a legal representative of the father, the accused is liable to repay the loan to the complainant. Therefore, the contention raised by the respondent counsel is not acceptable and on the

other hand, the complainant is not able to prove the liability of the accused and the cheque was dishonored, thereby, the accused is liable for the punishment under Section 138 of N.I. Act and the complaint is maintainable.

11. In respect of the another contention raised by the respondent that the debt is time barred one, his father borrowed loan in the year 2003, the cheque was issued after four years, therefore, there is no liability. In this regard, the complainant has stated and it is specifically mentioned that the accused has undertaken to repay the amount and he has paid Rs.10,000/- within two years and specifically mentioned that on 10.06.2005, the accused repaid Rs.10,000/- towards his father's liability and thereafter in the year 2006, he has issued two cheques on this behalf. Therefore, once the amount was already repaid, the question of taking contention that it is barred debt does not arise and it gets renewed. Therefore, the accused once paid Rs.10,000/- by cash and subsequently, he issued a cheque to discharge the liability, he is liable for

discharging his liability of his father. Therefore, the trial Court has rightly convicted the accused as the First Appellate Court not considered Section 29 of the N.I. Act and has erred in acquitting the accused. Therefore, the judgment of the First Appellate Court is liable to be set aside.

12. Accordingly, the appeal is allowed.

The judgment of the II Additional Sessions Judge, Davanagere in Crl.A.No.140/2010 is hereby set aside.

The judgment of the trial Court in C.C.No.1303/2009 convicting the respondent-accused is hereby upheld.

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