

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 31ST DAY OF MAY 2012

BEFORE

THE HON'BLE MR.JUSTICE JAWAD RAHIM

CRIMINAL APPEAL No.1331/2006

BETWEEN

B R BHASKAR
PROPRIETOR
M/S SONY TRAVEL LINES
NO J 4 & 5, UNITY BUILDING
J C ROAD, BANGALORE 2

... APPELLANT

(BY SRI.S.B.TOTAD FOR M/S.B S P S ASSOCIATES, ADV.)

AND

SRI BALAKRISHNA
CIVIL CONTRACTOR
NO 38, BALAKRISHNA NILAYA
11 CROSS, I MAIN
S R NAGAR
BANGALORE

... RESPONDENT

(BY SRI. A N RADHAKRISHNA, ADV.)

CRL.A FILED U/S.378 CR.P.C. BY THE ADV. FOR THE APPELLANT PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE JUDGMENT DT.8.3.06 PASSED IN C.C.NO.9562/03 ON THE FILE OF THE XIII ACMM., B'LORE - FOR THE OFFENCE PUNISHABLE UNDER SECTION 138 OF THE N.I.ACT.

THIS CRL.A. COMING ON FOR HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:



J U D G M E N T

Complainant's appeal against acquittal of the respondent for offence punishable under Section 138 of the N.I.Act.

2. Heard learned counsel Sri.S.B.Totad and learned counsel Sri.A.N.Radhakrishna for the respondent/accused.

3. Perused the records in supplementation thereto.

4. It is manifest from the records the appellant initiated prosecution against the respondent describing itself as a proprietary concern nomenclatured as M/s.Sony Travel Lines for offence under Section 138 of the N.I. on the allegation that the respondent had borrowed from him a sum of Rs.1,50,000/- agreeing to repay the amount by the end of December 2002. On demand made by him, he issued the impugned cheque on 02.01.2003. The cheque on presentation was dishonoured necessitating in issuance of statutory notice. But the accused evaded notice and



failed to comply with the demands made therein. It necessitated filing of the complaint on the basis of which cognizance was taken and respondent was put to trial. During the trial, the complainant tendered evidence as PW1 and placed reliance on nine documents while the respondent examined himself as DW1 and relied on five documents. The learned trial Judge accepted the defence contention that complainant had failed to establish existence of debt and legal liability and recorded acquittal. It is assailed in this appeal.

5. Sri.S.B.Totad, learned appellant's counsel drew my attention to the fact that the learned trial Judge has observed, "**the complainant-PW1 had not signed the complaint Ex.P8**" which observation is against the records. Similarly, he drew my attention to the fact that the complainant had discharged the initial burden of establishing the issuance of cheque impugned by the respondent/accused in respect of the account maintained by him and his signature, which was dishonoured. He would submit that all these aspects establish ingredients



of offence punishable under Section 138 of N.I Act but the learned trial Judge erred in granting acquittal on surmises and conjectures.

6. In negation of these grounds, Sri.A.N.Radhakrishna, learned counsel for the accused submit that the accused had through Ex.D1 to D5 established complainant had obtained loan in a sum of Rs.15 lakhs from the Canara Bank and had made the respondent/accused a co-obligant. He submits that the condition of the complainant was financially strained and he had borrowed Rupees Twenty Lakhs. He could not have lent Rs.1,50,000/- to the respondent/accused since he had no substantial source of income to lend money as claimed. He would then submit that the cheque was issued by the accused to help the complainant in obtaining loan from the Bank and therefore, it was not towards discharge or legal liability. The third submission is complainant was defective as it was not signed by the proprietor.

7. The contentions of both sides have received my consideration.



8. At the outset, it must be noticed that the complaint is presented in the name of M/s.Sony Travel Lines under the signature of PW1-B.R.Bhaskar. In the causetitle, it is described as a proprietary concern and in the foot of the complaint also, he has signed for M/s.Sony Travel Lines. But the endorsement made is Managing Partner. This aspect has been urged by learned counsel for the respondent Sri.A.N.Radhakrishna to contend that complaint was not signed by PW1 as a proprietor. He has signed it as a managing partner thus it is defective. These submissions are to be discounted because he has not signed it as a Managing Director. No doubt, there is an endorsement that he has signed the complaint as a Managing Partner, the question that has to be considered is whether it is a proprietary concern or partnership. The trial Court has not considered it. The learned trial Judge has mislead himself in belief that the contention of the accused that complaint is not signed by the person who represents the juristic person viz., M/s.Sony Travels Lines is defective. He has referred to Section 141 of the N.I.Act



to hold that M/s.Sony Travel Lines is a juristic person and complaint should have been signed by its managing partner or managing director. This observation of the learned trial Judge is erroneous because the complaint is presented not by a juristic person. It is by a proprietary concern. The proprietary concern has to be distinguished from a juristic person like a company, corporation, corporate body or a partnership concern. A proprietary concern is not a legal entity. It is represented by a person who owns it which in this case is PW1-B.R.Bhaskar. Since PW1 has signed the complaint, it becomes immaterial as to how he has described himself. The accused has not disputed the statement in the complaint that it is a proprietary concern.

9. Therefore, the first ground on which the acquittal has been granted is untenable.

10. As far as second ground regarding existence of debt or legal liability is concerned, the complainant has produced the impugned cheque stating it is signed by the respondent/accused. The respondent/accused has not



disputed it is his signature. He has admitted that it was given by him to the complainant at the time of offering surety by him in a loan transaction with the Canara Bank. This defence is also not acceptable because had the cheque been issued in relation to that transaction, it should have been given in the name of the Canara Bank. The cheque is in the name of the complainant. So, on that account also, the acquittal granted is untenable. As the complainant has established issuance of cheque, its dishonour and non-compliance to the demands made in the statutory notice, the complainant had discharged the burden of proof. It is now the reversal of the burden cast on the accused to rebut the presumption under Section 139 of the N.I.Act. Except for contending as above, he has not substantiated his defence that the cheque was issued in relation to a loan transaction with Canara Bank. In this view, the acquittal of the respondent is not justified. It is set aside.

11. The respondent/accused is convicted for offence under Section 138 of the N.I.Act in the matter



relating to dishonour of the impugned cheque of Rs.1,50,000/-Consequently, he is sentenced to pay Rs.1,50,000/-, the amount covered under the cheque along with Rs.50,000/- as fine. In all, the accused is sentenced to pay Rs.2,00,000/- in default, to undergo imprisonment for a period of two months. On recovery of the amount, it is ordered to be paid over to the appellant as compensation permissible under Section 357 of the Cr.P.C.

**Sd/-
JUDGE**

vg/-