

## Petitioner convicted for cheque dishonour as cheques were issued to pay off debt and weren't stolen

**Summary – The High Court of Madras in a recent case of V. Mohan., (the Assessee) held that Negotiable Instruments Act: Where it was proved that cheque was issued by accused to complainant in discharge of liability and plea of accused regarding cheque being stolen was found to be false, accused was to be convicted under section 138 for dishonour of said cheque**

### Facts

- The complainant and accused were running a partnership firm and it was dissolved on 2-11-2001 and, therefore, the accused had to pay a sum to the complainant. For that amount, the accused had issued a cheque for Rs. 16,72,000, dated 18-10-2002. When the cheque was presented for collection on 7-2-2003, it returned with an endorsement 'insufficient funds' on 8-2-2003.
- The complainant issued a statutory notice. Since, the accused had not come forward to pay the cheque amount, a private complaint was lodged.
- After trial, the Trial Court convicted the petitioner/accused under section 138 and sentenced him to undergo simple imprisonment for a period of two years and to pay a sum of Rs. 20,00,000 as compensation to the complainant.
- On appeal, the Appellate Court, while upholding the conviction, reduced the sentence from two years simple imprisonment to six months simple imprisonment and the compensation amount was reduced to Rs. 17,00,000. Aggrieved by which, the instant Criminal Revision Case was filed by the accused.

### Held

- In the light of the principles culled out in the judgment of the Apex Court in *K.S. Panduranga v. State of Karnataka* [2013] 3 SCC 721, it is crystal clear that no doubt, the Court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so and further, the Court can decide the matter even in the absence of the accused or his counsel, but, only criteria is that the case should be decided on merits in the absence of the accused and the Court cannot dismiss an appeal for non-prosecution simpliciter without examining the case on merits. As the case is pending from 2008 and the petitioner/accused is successful in dragging on the case, the main Criminal Revision Case itself is taken up and disposed of on merits after hearing the respondent and also after perusing the materials available on record.
- On a perusal of the grounds raised in the revision, it is seen that the main ground raised by the petitioner/accused is that when the income-tax return filed by the respondent/complainant contains the amount due from the petitioner/accused was only Rs. 12,72,000, whereas, the cheque was for Rs. 16,72,000 and this discrepancy indicates that the claim of the respondent/complainant is not a genuine one. The petitioner/accused has further raised a plea that the cheque was forcibly

obtained by the complainant by using utmost threat and coercion. The petitioner/accused has examined, one 'N', who was a staff of the partnership firm, to show that the cheque was obtained by the complainant by using utmost threat and coercion and, hence, a complaint was given by the accused in this regard. The sub-Inspector of Police was examined who would contend that according to the accused, the cheque was not properly accounted for. Further, according to the accused, when the amount to be paid by the accused is not correctly proved, the defence ought not to have been accepted and, hence, both the lower Courts have wrongly come to the conclusion and convicted the accused.

- *Per contra*, it is the case of the respondent/complainant that he admits that he was a partner in the partnership, for which, he was invested a huge sum and the dissolution of partnership firm was also accepted. Therefore, when it is proved that the cheque was issued by the petitioner/accused towards the discharge of any liability the initial presumption under section 139 will come into operation and it is in favour of the complainant and the said presumption is a rebuttable presumption and it has to be rebutted by the accused by letting in proper evidence. Merely because, there is a discrepancy regarding the amount in the Income-tax return filed by the complainant, that cannot take away the right of parties, when there is consensus between the parties regarding the amount, for which, the cheque was given. Further, according to the complainant, in the complaint given by the accused on 15-3-2004, it is stated that the cheque has been stolen away by the complainant and now, it is tried to be misused by the complainant, whereas, 'N', who was the staff of the partnership firm, would clearly depose to the effect that the cheque was forcibly obtained by the complainant by using threat and coercion and, therefore, the private complaint was given.
- Thus, it is clear that the alleged cheque alleged to have been given by the accused to the complainant is dated 18-10-2002 and when it was presented for collection on 7-2-2003, it got dishonoured, for which, a statutory notice was issued to the accused on 15-2-2003, after which, since, the accused has not come forward to pay the amount, the complaint for the offence under section 138 was given by the complainant in the year 2003, whereas, a complaint was lodged by the petitioner/accused only in the year 2004, *i.e.*, on 15-3-2004 alleging that the cheque was stolen by the complainant, *i.e.*, nearly one year after the issuance of the statutory notice dated 15-2-2003. If the cheque was really stolen by the complainant as alleged by the accused, it is not known as to what prevented the accused from giving the complaint immediately after the incident and what is the purpose of giving the complaint belatedly, that too, nearly one year after the issuance of the statutory notice and this would clearly go to show that the complaint given by the petitioner/accused is only an afterthought and this discrepancy in respect of the very averment regarding the theft of cheque has been rightly pointed out by the lower Courts. Apart from that, the small discrepancy with regard to the amount found in the Income-tax return filed by the complainant cannot be a reason to say that the complainant's claim is not a genuine one, especially, when there is a clear consensus between the parties regarding the amount, for which, the cheque

was given and, therefore, on merits, the Appellate Court has rightly held that the accused is found guilty for the offence under section 138 and convicted and sentenced him to undergo the imprisonment and also directed them to pay compensation as stated *supra*. Hence, there is no reason to interfere with the reasoned judgment passed by the Appellate Court, dated 18-11-2008. The Criminal Revision Case is dismissed.