

Karnataka High Court Shreyas Agro Services Pvt. Ltd. vs Chandrakumar S.B. on 16 February, 2006 Equivalent citations: II (2007) BC 357, 2006 CriLJ 3140, 2007 (6) KarLJ 237 Author: K S Rao Bench: K S Rao JUDGMENT K. Sreedhar Rao, J. 1. The appellant-company was supplying the products on credit to dealers. The respondent-accused is one of the dealers of the appellant. It is said that the cheque Ex. P. 1 issued by the accused for discharge of the credit liability is dishonoured. The statutory legal notice is issued in time. The prosecution is launched within the period of limitation envisaged Under Section 138 of the N.I. Act. 2. The admitted facts disclose that the accused issued a signed blank cheque in question to the appellant with a liberty to fill up the other necessary particulars. The appellant has filled up the amount due as Rs. 1,92,406/-. But in the cross-examination of P.W. 1, it is admitted that the company has issued circular instructions to all its dealers to deposit signed blank cheques as a security for credit supply. The object of such insistence is to see that if there is a default on the part of the dealer, the company would fill up the cheque showing the amount due as on that day payable by the dealer as a measure for effective recovery of dues. 3. The very scheme of procedure adopted shows that the cheques are not issued in respect of any current existing ascertained liability. The words “for discharge of any debt or other liability” in Section 138 of N.I. Act should be interpreted to mean current existing or past ascertained liabilities. The cheque issued in respect of future liabilities not in existence as on the date of cheque would not attract prosecution Under Section 138 of N.I. Act. 4. The decision of the Supreme Court in I.C.D.S. Ltd. v. Beena Shabeer has no application to the facts of the present case. In the said case the cheque was issued by a guarantor. The Supreme Court while interpreting the words “discharge of any debt or liability” held that the liability of the guarantor would also come within the ambit of words “the other liability”. In the instant case the issue is altogether different. The accused had issued a blank cheque not in respect of any current or ascertained liability but it was issued in respect of uncertain future liability. In such situation the provisions of Section 138 of the Act would not attract and if a cheque so issued is dishonoured, no offence Under Section 138 of the Negotiable Instruments Act can be inferred. 5. The appellant has also produced the letter written by the accused marked at Ex P. 40 to contend that the accused had admitted the liability. The contents of the letter discloses that the accused admits the principal amount but however disputes the interest claimed and states that the amount reflected in the cheques is not the correct legal liability. Section 20 of N.I. Act declares that inchoate instruments are also valid and legally enforceable. In the case of a signed blank cheque, the drawer gives authority to the drawee to fill up the agreed liability. If the drawee were to dishonestly fill up any excess liability and the extent of liability if it becomes bona fide matter of civil dispute in such case, the drawer has no obligation to facilitate the encashment of cheque. In the instant case the reply Ex. P. 40 discloses that long before presentation of cheque, the extent of liability was disputed but ignoring the objection, the company filled up the cheque for an amount not admitted by the drawer. If the accused were to prove that there is a bona fide dispute with regard to extent of liability, the dishonour

of cheque under such circumstance does not attract prosecution Under Section 138 of N.I. Act. The dismissal of complaint is sound and proper. The appeal is dismissed.