

Vinay Devanna Nayak vs Ryot Seva Sahakari Bank Ltd on 7 December, 2007

Equivalent citations: AIR 2008 SUPREME COURT 716, 2007 AIR SCW 7844, 2008 (1) AIR KANT HCR 478, 2008 CLC 1 (SC), 2008 CORLA(BL SUPP) 89 SC, (2008) 1 MH LJ (CRI) 649, (2008) 1 CRILR(RAJ) 68, 2008 (1) CIVILCOURTC 268, 2008 CRILR(SC&MP) 68, 2008 (1) CALCRILR 340, 2008 (1) SCC(CRI) 351, 2008 (2) SCC 305, 2008 CRILR(SC MAH GUJ) 68, 2007 (13) SCALE 705, (2008) ILR (KANT) 1387, 2008 ALL MR(CRI) 10 NOC, (2007) 13 SCALE 705, (2007) 4 CURCC 273, (2007) 8 SUPREME 245, (2008) 105 CUT LT 673, (2007) 4 CRIMES 352, (2008) 1 CHANDCRIC 52, (2008) 1 NIJ 278, (2008) 1 KER LT 1, (2008) 1 MADLW(CRI) 623, (2008) 1 MAD LJ(CRI) 871, (2008) 39 OCR 261, (2008) 2 PUN LR 194, (2008) 1 RECCRIR 249, (2008) 1 CURCRIR 252, (2008) 2 BANKCAS 71, (2008) 1 BOMCR(CRI) 233, (2008) 1 DLT(CRL) 609, (2008) 1 CAL LJ 281, (2008) 1 RECCIVR 249, (2008) 3 MAH LJ 395, 2008 (3) ANDHLT(CRI) 380 SC, (2008) 3 ANDHLT(CRI) 380, (2008) 1 BANKCLR 530, (2008) 1 BOM CR 523

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Bench: C.K. Thakker, Markandey Katju

CASE NO.:

Appeal (crl.) 1679 of 2007

PETITIONER:

VINAY DEVANNA NAYAK

RESPONDENT:

RYOT SEVA SAHAKARI BANK LTD

DATE OF JUDGMENT: 07/12/2007

BENCH:

C.K. THAKKER & MARKANDEY KATJU

JUDGMENT:

J U D G M E N T CRIMINAL APPEAL NO. 1679 OF 2007 ARISING OUT OF SPECIAL LEAVE PETITION (CRL.) NO. 6908 OF 2007 C.K. THAKKER, J.

1. Delay Condoned. Leave granted.

2. The present appeal is filed against an order passed by the Court of Civil Judge (Jr. Dvn.) and Judicial Magistrate First Class, Ankola on April 12, 2004 in Criminal Case No.73 of 2001, confirmed by the Sessions Judge, Fast Track Court-I, Karwar on March 24, 2005 in Criminal Appeal No.50 of 2004 as also confirmed by the High Court of Karnataka, Bangalore on December 20, 2005 in Criminal Revision Petition No.1003 of 2005.

3. Brief facts of the case are that the appellant herein was a member of Ryot Sewa Sahakari Bank Ltd., Basgod, Taluka Ankola ('Complainant Bank' for short). He had obtained a loan of Rs.20,000/- from the Complainant-Bank on April 3, 1998 for business. The amount was not paid by the appellant. The appellant issued a cheque of Rs.24,000/- on October 13, 2000 in favour of the Complainant-Bank and assured the Bank that it would be honoured. But when the cheque was submitted for clearance, it was dishonored and returned to the drawer on December 22, 2000 with endorsement; "Loan account due date is over and account is not in operation". The complainant, therefore, issued a registered legal notice on December 26, 2000 which was duly served upon the accused-loanee on December 30, 2000. In spite of the notice, no payment was made by the accused and hence a criminal case was filed by the Bank against him under the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act'). A summons was issued to the accused for an offence punishable under Section 138 of the Act. He pleaded not guilty to the charge and claimed to be tried.

4. The Trial Court on the basis of evidence adduced by the complainant Bank, held that the accused had issued a cheque of Rs.24,000/- which was dishonored and even after receipt of legal notice, he failed to pay the amount and thereby he had committed an offence punishable under 138 of Act. The Court, hence, convicted the accused and ordered him to undergo imprisonment for a period of six months. The accused was also ordered to pay a sum of Rs.48,000/- as compensation within one month from the date of the order. The Court ordered that out of the said amount of compensation, Rs.43,000/- should be paid to the complainant towards the compensation and Rs.5,000/- to be appropriated to the State. In default of payment of compensation, the accused was ordered to undergo imprisonment for a period of six months.

5. Being aggrieved by the order of conviction and sentence, the appellant preferred an appeal. The Appellate Court confirmed the order of conviction and sentence recorded by the Trial Court. It, however, reduced the amount of compensation from Rs.43,000/- to Rs.30,000/- and fine from Rs.5,000/- to Rs.3,000/-. Order of default- sentence was maintained.

6. The aggrieved accused invoked Revisional Jurisdiction of the High Court under Section 401 read with Section 397 of the Code of Criminal Procedure, 1973. The High Court on July 13, 2005, passed an interim order directing the accused to deposit the compensation-amount in the Court. But the accused failed to comply with the said order. When the matter came up for hearing, the High Court, by the impugned order dated December 20, 2005 dismissed the Revision Petition observing that there was no ground to interfere with the order passed by the Trial Court and confirmed by the First Appellate Court. It also observed that the petitioner-accused had not complied with the interim order passed on July 13, 2005. Thus, there was no reason to admit the revision petition and accordingly it was dismissed. The accused has challenged that order in this Court.

7. On November 12, 2007, the matter was placed for admission-hearing. It was stated by the Learned Counsel for the appellant that the appellant intended to pay the amount. Accordingly, notice was issued to the other side. Pursuant to the notice, the respondent- Bank appeared and affidavit is filed by General Manager, Ryot Sewa Sahakari Bank Limited, Basgod, wherein it was stated that the appellant had paid an amount of Rs.45,000/- towards final settlement of the claim of the respondent Bank on July 25, 2007 and the Bank had no other claim against the appellant and the matter has been settled amicably.

8. We have heard the Learned Counsel for the parties. The Learned Counsel for the appellant submitted that since the matter has been amicably settled between parties and the amount of Rs.45,000/- has been paid to the Bank towards 'full and final settlement' and no further claim has remained, the compromise may be recorded, the appeal may be allowed and appellant-accused may be ordered to be acquitted of the charge levelled and conviction recorded against him by setting aside conviction as well as sentence.

9. The Learned Counsel for the respondent- bank admitted that there was a compromise between the parties and an amount of Rs.45,000/- had been accepted by the bank towards final settlement of the dues against the appellant and no further claim has been put forward by the respondent bank.

10. In view of the fact that the matter has been settled and the amount of Rs.45,000/- has been paid by the appellant and accepted by the bank as 'full and final settlement' and there are no further dues by the bank, prima facie, there should be no objection to grant the prayer of the accused and acquit him of the offence with which he was charged and convicted by the Courts below.

11. It is no doubt true that every crime is considered to be an offence against the society as a whole and not only against an individual even though an individual might have suffered thereby. It is, therefore, the duty of the State to take appropriate action against the offender. It is equally the duty of a Court of law administering criminal justice to punish a criminal. But there are offences and offences. Certain offences are very serious in which compromise or settlement is not permissible. Some other offences, on the other hand, are not so serious and the law may allow the parties to settle them by entering into a compromise. The compounding of an offence signifies that the person against whom an offence has been committed has received some gratification to an act as an inducement for his abstaining from proceeding further with the case.

12. So far as the Code of Criminal Procedure is concerned Section 320 deals with offences which are compoundable, either by the parties without the leave of the Court or by the parties but only with the leave of the Court. Sub-section (1) of Section 320 enumerates the offences which are compoundable without the leave of the Court, while sub- section (2) of the said section specifies the offences which are compoundable with the leave of the Court. Sub-section (9) of Section 320 declares; "No offence shall be compounded except as provided by this section". It is thus clear that offences not referred to in sub- sections (1) and (2) of Section 320 and not included in the Table are not compoundable. Similarly, offences punishable under laws other than the Indian Penal Code also cannot be compounded.

13. In the circumstances, a question may arise whether an offence punishable under Section 138 of the Act which is a special law can be compounded. Whereas some High Courts held that if the matter is settled between the parties, the offence can be compounded, other High Courts took a contrary view.

14. In *Cranex Ltd. & Anr. v. Nagarjuna Finance Ltd. & Anr.*, (2000) 7 SCC 388, a settlement had been entered between the parties during the pendency of appeal in Sessions Court against an order of conviction and sentence recorded by the Magistrate under section 138 of the Act. This Court directed the Appellate Court to consider the settlement and to take appropriate action in accordance with law.

15. In *O.P. Dholkia vs. State of Haryana & Anr.*, (2000) 1 SCC 762, an order of conviction recorded by the Trial Court was upheld by the Appellate as well as Revisional Court. Thereafter, however, a compromise had been arrived at between the parties and the entire amount was paid to the complainant. It was, therefore, submitted before this Court that the accused may be acquitted. The Learned Counsel appearing for the State urged that when the conviction and sentence had been maintained by all Courts, this Court need not show any indulgence. Though the Court observed that there was 'some force' in the said contention, taking into account the nature of offence and the fact that the complainant had compromised the matter, permission was granted 'in the peculiar facts and circumstances' of the case [see also *Nambiram Veetil Pocker v. Stte of Kerala & Anr.*, (2003) 9 SCC 214]. It is thus clear that even though technically the provisions of Section 320 of the Code of Criminal Procedure did not apply to offences not covered by the Indian Penal Code, the fact as to compromise between the parties and payment of dues under Section 138 of the Act was considered a relevant fact and compounding was allowed by the Court [vide *Kishore Kumar v. J.K. Corporation Ltd.*, (2004) 13 SCC 494; *Shailesh Shyam Parsekar v. Baban @ Vishwanath*, (2005) 4 SCC 162; *K.J.B.L. Rama Reddy v. Annapurna Seeds & Anr.*, (2005) 10 SCC 632].

16. Section 138 of the Act was inserted by the Banking, Public Financial Institutions and Negotiable Instrument Law (Amendment) Act, 1988 (ACT 66 of 1988) to regulate financial promises in growing business, trade, commerce and industrial activities of the country and the strict liability to promote greater vigilance in financial matters. The incorporation of the provision is designed to safeguard the faith of the creditor in the drawer of the cheque, which is essential to the economic life of a developing country like India. The provision has been introduced with a view to curb cases of issuing cheques indiscriminately by making stringent provisions and safeguarding interest of creditors.

17. As observed by this Court in *Electronic Trade & Technology Development Corporation Ltd. V. Indian Technologists & Engineers*, (1996) 2 SCC 739, the object of bringing Section 138 in the statute book is to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. The provision is intended to prevent dishonesty on the part of the drawer of negotiable instruments in issuing cheques without sufficient funds or with a view to inducing the payee or holder in due course to act upon it. It thus seeks to promote the efficacy of bank operations and ensures credibility in transacting business through cheques. In such matters, therefore, normally compounding of offences should not be denied. Presumably, Parliament also

realized this aspect and inserted Section 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002. (ACT 55 of 2002). The said section reads thus:

S.147. Offences to be compoundable. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.

18. Taking into consideration even the said provision (Section 147) and the primary object underlying Section 138, in our judgment, there is no reason to refuse compromise between the parties. We, therefore, dispose of the appeal on the basis of the settlement arrived at between the appellant and the respondent.

19. For the foregoing reasons the appeal deserves to be allowed and is accordingly allowed by holding that since the matter has been compromised between the parties and the amount of Rs.45,000/- has been paid by the appellant towards full and final settlement to the respondent-bank towards its dues, the appellant is entitled to acquittal. The order of conviction and sentence recorded by all courts is set aside and he is acquitted of the charge levelled against him.

20. Ordered accordingly.