A.V. Murthy vs B.S. Nagabasavanna on 8 February, 2002

Equivalent citations: AIR 2002 SUPREME COURT 985, 2002 (2) SCC 642, 2002 AIR SCW 694, 2002 AIR - KANT. H. C. R. 746, 2002 (1) UJ (SC) 424, 2002 (2) SCALE 65, 2002 ALL MR(CRI) 709, (2002) 1 JT 605 (SC), 2003 (1) ALL CJ 453, 2002 (2) COM LJ 228 SC, (2002) 1 CGLJ 260, (2002) 2 COMLJ 228, 2002 CRILR(SC&MP) 286, 2002 (1) SLT 755, 2002 UJ(SC) 1 424, (2002) ILR (KANT) (3) 3301, (2002) 2 BANKCAS 1, (2002) 1 EASTCRIC 459, (2002) 1 ALLCRIR 786, (2002) 108 COMCAS 838, (2002) 22 OCR 390, (2002) 2 RAJ CRI C 325, (2002) 1 RECCRIR 745, (2002) 1 SCJ 675, (2002) 1 CURCRIR 150, (2002) 1 SUPREME 517, (2002) 2 SCALE 65, (2002) 45 ALLCRIC 390, (2002) 48 ALL LR 378, (2002) 2 BLJ 440, (2002) 3 CAL HN 40, (2002) 2 ALLCRILR 21, (2002) 2 CIVLJ 218, (2002) 1 CRIMES 306, (2002) SC CR R 342, 2002 CRILR(SC MAH GUJ) 286, 2002 (1) ALD(CRL) 429, 2002 (1) ANDHLT(CRI) 234 SC, (2002) 1 ANDHLT(CRI) 234, (2002) 1 BANKCLR 525, (2002) 3 BOM CR 13

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Bench: R.P. Sethi, K.G. Balakrishnan

CASE NO.:
Appeal (crl.) 206 of 2002

PETITIONER:
A.V. MURTHY

Vs.

RESPONDENT:
B.S. NAGABASAVANNA

DATE OF JUDGMENT: 08/02/2002

BENCH:
R.P. Sethi & K.G. Balakrishnan

JUDGMENT:

K.G. BALAKRISHNAN, J.

Leave granted.

This appeal is directed against the order passed by a learned Single Judge of the High Court of Karnataka. The appellant herein filed a complaint before the Magistrate alleging that the respondent herein had committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 [for short, "the Act"]. The appellant alleged that he and his two friends had advanced a sum of Rs.7.5 lakhs to the respondent about four years back to enable him to start a petrol pump and that the respondent did not pay back the said amount despite repeated demands and finally at the request of the appellant, on 30.3.1998 the respondent issued a cheque in favour of the appellant. The appellant presented the cheque for payment, but the cheque was dishonoured by the bank for the reason "Account closed". Thereafter, the appellant issued a statutory demand notice and as the respondent failed to pay the amount, a complaint was filed before the Magistrate by the appellant. In the complaint, it was alleged that the appellant and his two friends advanced the said sum of Rs. 7.5 lakhs to the respondent about four years prior to the date of issue of the cheque by the respondent. The learned Magistrate issued summons to the respondent. The respondent filed a Criminal Revision before the IInd Addl. Sessions Judge, Mysore, alleging that the complaint was not maintainable as the amount advanced by the appellant to him was about four years prior to the date of issue of the cheque, and in view of the 'Explanation' appended to Section 138 of the Act, there was no legally enforceable debt or liability as against the respondent. The Addl. Sessions Judge accepted this plea and held that even on the basis of the averments in the complaint and the sworn statement of the complainant, the alleged borrowing was four years prior to the issuance of the cheque and hence that debt was not legally enforceable in view of the bar of limitation and, therefore, the Magistrate was in error in taking cognizance of the alleged offence under Section 138 of the Act. As a result, the Addl. Sessions Judge quashed the entire proceedings and aggrieved thereby, the appellant filed a Criminal Revision before the High Court of Karnataka but the learned Single Judge upheld the view of the Addl. Sessions Judge. The appeal has now come up before us.

We heard learned counsel for the appellant. Learned counsel contended that it was incorrect on the part of the Sessions Judge to hold that there was no legally enforceable debt or liability on the part of the respondent. He also contended that when a cheque is issued, under Section 118 of the Act, it has to be presumed that it was drawn for consideration. It was further contended that even though the appellant and his friends advanced the loan about four years back, the respondent had acknowledged this liability in his balance sheet and that even for the purpose of a civil suit, such debt or liability is not barred by limitation.

The respondent refused to accept notice and we did not have the advantage of hearing him. The respondent seems to have contended that as the loan was advanced four years prior to the issuance of the cheque, the debt or the liability for which the cheque was drawn by him had ceased to be legally enforceable and, therefore, no complaint could have been filed by the complainant under Section 138 of the Act.

As the complaint has been rejected at the threshold, we do not propose to express any opinion on this question as the matter is yet to be agitated by the parties. But, we are of the view that the learned Sessions Judge and the learned Single Judge of the High Court were clearly in error in

quashing the complaint proceedings. Under Section 118 of the Act, there is a presumption that until the contrary is proved, every negotiable instrument was drawn for consideration. Even under Section 139 of the Act, it is specifically stated that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for discharge, in whole or in part, of any debt or other liability. It is also pertinent to note that under sub-section (3) of Section 25 of the Indian Contract Act, 1872, a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits, is a valid contract. Moreover, in the instant, the appellant has submitted before us that the respondent, in his balance sheet prepared for every year subsequent to the loan advanced by the appellant, had shown the amount as deposits from friends. A copy of the balance sheet as on 31st March 1997 is also produced before us. If the amount borrowed by the respondent is shown in the balance sheet, it may amount to acknowledgement and the creditor might have a fresh period of limitation from the date on which the acknowledgement was made. However, we do not express any final opinion on all these aspects, as these are matters to be agitated before the Magistrate by way of defence of the respondent.

This is not a case where the cheque was drawn in respect of a debt or liability, which was completely barred from being enforced under law. If for example, the cheque was drawn in respect of a debt or liability payable under a wagering contract, it could have been said that that debt or liability is not legally enforceable as it is a claim, which is prohibited under law. This case is not a case of that type. But we are certain that at this stage of the proceedings, to say that the cheque drawn by the respondent was in respect of a debt or liability, which was not legally enforceable, was clearly illegal and erroneous.

Therefore, we set aside the order passed by the learned Single Judge of the High Court, allow this appeal and remand the matter to the Magistrate to proceed with the complaint in accordance with law. We make it clear that whatever has been stated by us regarding enforceability of the debt or liability is for the purpose of these proceedings and the respondent would be at liberty to set up all legally available defences.

There will be no order as to costs.

..J [R.P. Sethi] ..J [K.G. Balakrishnan] February 8, 2002.