

**(1997) 02 AP CK 0004**

**Andhra Pradesh High Court**

**Case No:** Criminal Appeal No. 651 of 1996

Kishan Bodhankar

APPELLANT

Vs

M.A. Hameed and Another

RESPONDENT

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**Date of Decision:** Feb. 28, 1997

**Acts Referred:**

- Negotiable Instruments Act, 1881 (NI) - Section 138, 139

**Citation:** (1997) 1 ALD(Cri) 787 : (1997) 2 ALT(Cri) 395 : (1998) 94 CompCas 525

**Hon'ble Judges:** B.S.A. Swamy, J

**Bench:** Single Bench

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### **Judgement**

B.S.A. Swamy J.

1. The appellant is the complainant in C.C. No. 42 of 1990, on the file of the Judicial First Class Magistrate, Bodhan. Aggrieved by the orders of acquittal passed by the magistrate u/s 138 of the Negotiable Instruments Act, 1881, the present appeal was filed.

2. The case of the appellant is that the accused borrowed an amount of Rs. 15,000 on July 11, 1988, under a pronote and January 31, 1990, the amount swelled to Rs. 19,000 including interest accrued on the principal. On February 5, 1990, the accused issued exhibit P-1 cheque drawn on Nizamabad District Co-operative Central Bank, Bodhan Branch. But when it was presented, the cheque was returned to the appellant with an endorsement "refer to drawer". Thereafter, the appellant seemed to have sent a legal notice, exhibit P-3, on February 12, 1990, and also sent the same under certificate of posting. As the accused failed to pay the amount, a complaint was lodged on March 6, 1990.

3. The appellant in support of his case examined himself as PW-1 and one of the partners of the firm was examined as PW-2. The branch manager of the District Co-operative Central Bank of Bodhan was examined as PW-3. As many as 12

documents, exhibits P-1 to P-12, were got marked on the side of the prosecution and exhibits D-1 and D-2 were also marked on the side of the respondent. The magistrate after going through the evidence let in by the appellant acquitted the accused of the charge as the complainant could not establish with any cogent evidence that the cheque was issued in discharge of a legally enforceable debt.

4. I have gone through the judgment of the court below which framed three issues for consideration, namely -

(1) Whether the complaint was filed by the appellant in his individual capacity or on behalf of the firm,

(2) Whether the firm is having valid licence to carry on money lending business,

(3) Whether the cheque was issued in discharge of an enforceable debt.

5. The court below held on issues Nos. 1 and 3 against the complainant and on issue No. 2 in his favour.

6. As far as issue No. 1 is concerned, I feel the learned magistrate went wrong in holding that the complaint was filed by the appellant in his personal capacity ignoring the clauses of the partnership agreement between the parties, exhibit P-10 in particular. Clause 5 of the agreement is extracted hereunder :

"The partners with the mutual consent shall appoint a manager for conducting day-to-day business with keen interest and responsibility and the manager appointed is authorised to represent the firm in offices, courts, taxation departments, etc., and to sign on all papers on behalf of the firm, to claim, prosecute and to defend the firm."

7. Thereafter the partners of the firm authorised the appellant herein to file civil suit and private complaints whenever it is necessary for the benefit and interest of the firm, vide its resolution dated October 10, 1989, marked as exhibit P-12. From this, it is evident that not only the partnership deed provides for the appointment of a general manager to look after the affairs of the partnership firm business but the appellant was authorised by a specific resolution to represent the firm in all court matters including civil and criminal. The court cannot hold that on the basis of array of parties shown in the cause title (i.e.,) Kishan Bodhankar, S/o. Narhar Rao Bodhankar, aged 48 years, manager, Sri Laxmi Finance Corporation (Regd.), Narsi Road, Bodhan Taluk that the complaint was filed by the appellant in his individual capacity ignoring the averments made in the complaint. It is not the case of the appellant that he let in monies in his personal capacity but it was his case throughout that the accused borrowed the monies from the Laxmi Finance Corporation and as he is the general manager of that company he filed this complaint. Even from the cause title it cannot be presumed that the complaint was filed in his personal capacity as he stated that he is the manager of the Laxmi Finance Corporation. For all these reasons, I hold that the finding of the court below

that the complaint was filed by the appellant in his personal capacity and as such the same is not maintainable ignoring the above documentary evidence, exhibits P-10 and P-12, is illegal. Hence, the finding of the magistrate to that extent is liable to be set aside and it is accordingly set aside.

8. Coming to issue No. 3, I have gone through the judgment. Except stating that the monies were lent by the Corporation, the appellant did not choose to get the promissory note or the ledger account maintained by the Corporation marked as exhibit in the case. Further it is the case of the accused that the loan obtained by him was cleared in 1988 itself and the bank demand note obtained from him was returned to him, but making use of the blank cheque available with the appellant they tried to foist a false case against him. In fact he got marked exhibit D-1, the demand note dated July 11, 1988. From this, it is evident that except filing the cheque said to have been issued by the accused, the complainant could not discharge the initial burden cast upon him u/s 139 of the Negotiable Instruments Act that the cheque issued was in the nature of a cheque mentioned in section 138 of the Negotiable Instruments Act (i.e.) that the cheque is issued for realisation of a legally enforceable debt by the complainant. Hence, I cannot say that the finding recorded by the magistrate on issue No. 3 suffers from any illegality. Accordingly, the finding of the magistrate on issue No. 3 that the complainant failed to prove that the cheque was issued in his favour to realise a legally enforceable debt from the accused, does not call for interference by this court.

9. Accordingly the appeal is dismissed.