

Muthoottu Chitty Fund and ors. Vs. V.C. Lukose and ors.

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Court : Kerala

Decided On : Jun-18-1990

Reported in : [1992]73CompCas414(Ker)

Judge : K. Sukumaran and; G. Rajasekharan, JJ.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 13

Appeal No. : A.S. Nos. 343, 344, 349 to 351 and 409 of 1981 and 107, 114 and 115 of 1982 and 81 of 1983

Appellant : Muthoottu Chitty Fund and ors.

Respondent : V.C. Lukose and ors.

Advocate for Def. : S. Narayanan Poti,; S. Sankarasubban and; B.V. Deepak

Advocate for Pet/Ap. : C.K.S. Panicker and; K.V. Gopinathan Nair, Advs.

Disposition : Appeals dismissed

Judgement :

K. Sukumaran, J.

1. These appeals challenge the decrees of the court below in money claims based on a cheque endorsed in favour of the plaintiff.

2. Various contentions were taken to resist the plaint claim, even to the extent of stating that the cheques were forged. The cheques in any case were accommodation cheques and, therefore, no money was payable, was yet another contention. These contentions were rightly negated by the court below. It was found that a plea regarding the cheque being an accommodation cheque' was not even indicated in the written statement. In one case, a reply notice was sent. But a plea of an accommodation cheque was conspicuously absent. In other cases, no replies were sent at all.

3. The second defendant was the person competent to speak about the nature of the cheque. He shied away from the witness box. We are in agreement with the view taken by the court below in the light of the evidence, materials and circumstances.

4. Even assuming that that is an accommodation cheque, the suit could be rightly decreed. The legal position is explained at page 354 of the Negotiable Instruments Act by Bhashyam and Adiga, 14th edition.

5. The rejection of the contention relating to forgery by the court below has not been seriously canvassed. The burden in that regard is heavy on the defendant ; the burden has not been sustained at all.

6. One other contention, not pleaded in the written statement but raised in the course of the arguments before the court below, was pressed before us. The contention, based on some features of the cheque as referred to hereinafter, had been repelled by the lower court. Yet, no specific contention was indicated in the memorandum of appeal. That notwithstanding, arguments were heard on that question.

7. The thrust of the appellants' contention was that, when the word 'bearer' had been scored off in the cheque, it lost its negotiability and then ceased to be a negotiable instrument. According to learned counsel, the scoring off of the word 'bearer' manifested an intention of the maker to annihilate the negotiability of the document. If it has ceased to be a negotiable instrument, neither Section 50 nor Section 51 will have any application, so proceeded the further argument. Counsel

referred to the history of the amendment to the [Negotiable Instruments Act, 1881](#). The background history, according to him, would justify his contention that the scoring off of the word 'bearer' or 'order' was sufficient to exclude the instrument from the category of a negotiable instrument as defined in the Act.

8. We have necessarily to refer to the relevant statutory provision to consider that contention. 'Negotiable instrument' is defined in Section 13. The first sub-section gives a definition as meaning a promissory note, bill of exchange or cheque payable either to order or to bearer. At first blush, it may appear that, when the word 'bearer' is scored off and when there is no word 'order', the instrument will not answer the description of a negotiable instrument. That will, however, be overlooking the specific term of Explanation (i) which reads :

'A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words, prohibiting transfer or indicating an intention that it shall not be transferable.'

9. Under the aforesaid Explanation, a 'cheque payable to order' will take in (1) such a cheque expressed to be so payable, and (2) a cheque payable to a particular person, provided that it satisfies a negative condition. That condition is that the cheque should not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

10. In the present case, Mathai Baby will be the particular person to whom the cheque is payable when that name is mentioned in the cheque, the exhibit A-20 and others. It will satisfy the former limb of the section. The further question is about the existence of a prohibition against transfer or intention of non-transferability. Counsel desired us to read the words 'indicating an intention that it shall not be transferable' in isolation. In the absence of appropriate words indicative of the intention of non-transferability, there will not be satisfaction of the condition which will take a cheque out of the category of the negotiable instrument as defined. A mere scoring off of the word 'bearer', according to us, does not posit the existence of words indicating an intention that it shall not be transferable. It is not as though illustrations of such an indication of an intention are unavailable in

the handling of negotiable instruments during the course of the commercial revolution. It is not necessary to allude to the history of commercial civilisation which had its propelling force regarding the various concepts in the Negotiable Instruments Act. Courts have always leaned in favour of an interpretation which made commerce feasible and easy. Commercial requirements have, if at all, only augmented such necessities. We have marched on from the time of sailing ships to bulk carriers, from slow moving machines to satellites and space ships, from simple ledger folders to computer methodology. The basic approach, however, remains the same. Thus, even while interpreting the Negotiable Instruments Act of 1881, including Section 13 thereof, the various considerations which have given content and meaning to the provisions relating to the negotiable instruments will have to be given their due role and relevance. So understood and so interpreted, the case on hand will be one which will not come within any one of those disqualifying instruments referred to in Section 50, or the limiting factors indicated in Section 51. The matter is now not altogether uncovered by judicial decisions. At least, important facts have received judicial discussion. The decision of the Allahabad High Court in *Durga Shah Mohan Lal Bankers v. Governor-General in Council*, AIR 1952 All 590, of the Calcutta High Court in *Tailors Priya v. Gulabchand Danraj*, AIR 1963 Cal 36, and of the Gujarat High Court in *Jagjivandas Bhikhabhai v. Gumanbhai Narottamdas*, AIR 1967 Guj 1, examined one facet or the other. The Gujarat High Court decision, in particular, emphasised the nature of the words of prohibition or contrary indication of an intention as required to change an instrument from the negotiability ordinarily assignable to it. The rule is that an instrument of the nature will be treated as negotiable instrument (sic). An exception is when the words cut down its effect and its character by positive words of the one kind or the other as elucidated already above. In a very recent decision, our learned brother, Balakrishnan J., considered this question in *M. George and Bros. v. K. C. Cherian* [1990] 68 Comp Cas 188. The principle will have application, with all force, in the present case as well.

11. In the light of the above discussion, we repel this contention as well. In the result, the appeals fail and they are dismissed with costs.

12. Cross-appeals have been preferred in A. S. Nos. 344, 350 and 409 of 1981, claiming higher interest. The claim had not been substantiated and was rightly rejected by the court below. The cross-appeals are also dismissed but without any order as to costs.

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