

A Brief Comment on Judgement of Honourable Supreme Court of India in K. Subramani Versus K. Damodara Naidu

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Abstract: The Judgement of the Honourable Supreme Court of India in K. Subramani versus K. Damodara Naidu reported in (2015)1 SCC 99 is being cited extensively at the Bar to secure unwarranted acquittals in cases under Section 138 of Negotiable Instruments Act, 1881. The Judgement must be understood and appreciated in the peculiar facts of the case and cannot be said to hold that the complainant in every case under Section 138 of Negotiable Instruments Act, 1881 has to prove his financial capacity or source of income for the loan advanced to the accused to secure a conviction as it will defeat the statutory presumption under Section 118 and 139 of Negotiable Instruments Act, 1881.

Keywords: Negotiable Instruments Act, 1881, Statutory presumption.

1. Introduction

Cases under Section 138 Negotiable Instruments Act, 1881 constitute a substantial percentage of the total cases pending in our country. The accused in such cases adopt a variety of defences to escape from the liability of the penal provision. The latest weapon in their arsenal seems to be the decision of the Apex Court in K. Subramani versus K. Damodara Naidu [1]. It is in this background that this Judgement deserves a relook.

2. The Judgement: Its Text and Spirit

The Judgement in the case is a short read. The crux of the judgement reads as follows:

“In the present case the complainant and the accused were working as Lecturers in a Government college at the relevant time and the alleged loan of Rs.14 lakhs is claimed to have been paid by cash and it is disputed. Both of them were governed by the Government Servants Conduct Rules which prescribes the mode of lending and borrowing. There is nothing on record to show that the prescribed mode was followed. The source claimed by the complainant is savings from his salary and an amount of Rs.5 lakhs derived by him from sale of site No.45 belonging to him. Neither in the complaint nor in the chief-examination of the complainant, there is any averment with regard to the sale price of site No.45. The concerned sale deed was also not produced. Though the complainant was an income-tax assessee he had admitted in his evidence that he had not shown the sale of site No.45 in his income-tax return. On

the contrary the complainant has admitted in his evidence that in the year 1997 he had obtained a loan of Rs.1, 49,205/- from L.I.C. It is pertinent to note that the alleged loan of Rs.14 lakhs is claimed to have been disbursed in the year 1997 to the accused. Further the complainant did not produce bank statement to substantiate his claim. The trial court took into account the testimony of the wife of the complainant in another criminal case arising under Section 138 of the N.I. Act in which she has stated that the present appellant/accused had not taken any loan from her husband. On a consideration of entire oral and documentary evidence the trial court came to the conclusion that the complainant had no source of income to lend a sum of Rs.14 lakhs to the accused and he failed to prove that there is legally recoverable debt payable by the accused to him. In our view the said conclusion of the trial court has been arrived at on proper appreciation of material evidence on record. The impugned judgment of remand made by the High Court in this case is unsustainable and liable to be set aside.

In the result this appeal is allowed and the impugned judgment insofar as the appellant is concerned is set aside and the judgment of acquittal passed by the trial court is restored.”

A careful scrutiny of the above quoted judgement only goes to show that the Apex Court has, in the unique facts and circumstances of the case, concluded that the complainant has failed to prove that there is a legally recoverable debt in his favour inter alia because he had ostensibly no source of income to lend the substantial sum of rupees fourteen lakhs to the accused. However, it would be perverse to conclude or deduce that the Apex Court in this decision has held that in every case under Section 138 Negotiable Instruments Act, 1881, the complainant has to prove his financial capacity to lend the amount of loan claimed for successful prosecution of the case as such a ratio has neither been laid down explicitly or suggested even impliedly in this decision. Such insistence would in fact defeat the statutory presumption incorporated under section 139 of the Negotiable Instruments Act, 1881 in favour of the holder of the cheque that he received the cheque for discharge of any debt or liability. Section 138 of the Negotiable Instruments Act reads as follows:

“138. Dishonour of cheque for insufficiency, etc., of funds in the account-Where any cheque drawn by a person on an

account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, (within thirty days) of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation- For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

A careful scrutiny of the provision quoted above makes it crystal clear that Section 138 of NI Act has two parts- the Primary and the Provisory. While the primary part of the provision lists the essential ingredients of the offence i.e. existence of a debt or a liability, issue of a cheque to discharge the whole or part of the debt or liability and the dishonour of

the said cheque due to insufficiency of fund in the account of the accused person, the provisory part of the provision points out three more essential conditions which are necessary for successful initiation of a proceeding U/S 138 of NI Act i.e.

(1) The cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(2) The payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, (within thirty days) of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(3) The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

This author is of the firm opinion that in a case under section 138 of the Negotiable Instruments Act, 1881, a complainant is only statutorily bound to prove the above requirements and insisting on proof of his financial capacity or source of income to lend the amount claimed would be unwarranted and unjustified and the decision in K. Subramani versus K. Damodara Naidu does not and should not aid the accused in this regard to secure an acquittal on this count alone.

3. Conclusion

This paper presented a Comment on Judgement of Honourable Supreme Court of India in K. Subramani Versus K. Damodara Naidu.

References

- [1] (2015)1 SCC 99