

Result:- Writ application allowed. The State directed to pay compensation of Rs. 2,00,000 to the petitioner within one month, to be recovered from the erring Jail Superintendent. Inspector General (Prisons) directed to issue guidelines to all Jail Superintendents within two weeks.

ABC 2025 (II) 1025 MAD
ACQUITTAL & BAIL CASES
HIGH COURT OF MADRAS

(K. Murali Shankar,J.)

Crl.A.(MD) No.758 of 2022

Decided On 17 October, 2025

P. KULANTHAISAMY - Appellant(s).

Versus

K. MURUGAN & ANOTHER - Respondent(s).

Law Covered:- (A) *Negotiable Instruments Act, 1881 - Section 138 - Appeal Against Acquittal - Legally Enforceable Debt or Liability - Void Agreement - In Pari Delicto Doctrine - Appeal against acquittal u/s 138 NI Act - Trial court acquitted the accused on the ground that the cheque was not issued for a legally enforceable debt - The debt arose from a payment of Rs. 3 lakhs made by the complainant to the accused for securing a government job - Held, an agreement where the consideration is for securing public employment is opposed to public policy and is unlawful under Section 23 of the Indian Contract Act, 1872 - Such an agreement is void ab initio - Consequently, the sum paid does not constitute a "legally enforceable debt or liability" as required to attract Section 138 NI Act - The doctrine of "in pari delicto potior est conditio possidentis" (in equal fault, the condition of the possessor is better) applies, and the court will not assist either party to an illegal agreement - Appeal dismissed and acquittal upheld. (Paras 5-19)*

(B) *Indian Contract Act, 1872 - Section 23 - Unlawful Consideration - Agreements Opposed to Public Policy - Void Agreements - Held, the consideration or object of an agreement is unlawful if it is forbidden by law, fraudulent, involves injury to another, or is regarded by the Court as immoral or opposed to public policy - An agreement based on such consideration is void - Illustration (f) to Section 23 specifically covers a promise to pay money in exchange for securing public employment, rendering such an agreement void. (Paras 12-16)*

(C) *Indian Contract Act, 1872 - Section 65 - Doctrine of Restitution - Inapplicability to Void Ab Initio Agreements - Held,*

Section 65, which provides for restitution of advantages received under a void agreement, applies only when an agreement is discovered to be void at a subsequent stage - It does not apply to agreements that are void ab initio (from the very beginning), such as those with unlawful consideration under Section 23 - Where parties knowingly enter into a void ab initio agreement, they cannot claim restitution. (Paras 17-18)

Facts:- This criminal appeal was filed by the complainant against the judgment of the Fast Track Magistrate Court acquitting the accused of an offence under Section 138 of the Negotiable Instruments Act, 1881 (NI Act). The complainant's case was that he paid Rs. 3 lakhs to the accused, who promised to secure a conductor's job for him in the Tamil Nadu State Transport Corporation (TNSC). Upon failure to provide the job, the accused issued a cheque for the said amount, which was dishonoured.

Law of relief:- An agreement which is unlawful u/s 23 of the Indian Contract Act - Such an agreement is void ab initio - Consequently, the sum paid does not constitute a "legally enforceable debt or liability" as required to attract Section 138 NI Act.

Counsel:-

For Appellant: Mrs. M. Mariya Vinola, Adv.

For Respondents: Mr. K. Sudalaiyandi, Adv. for R1; Mr. B. Thanga Aravindh, Government Advocate (Crl. Side) for R2

Cases Referred:-

1. *Virender Singh v. Laxmi Narain and another*: 2007 CrL. L.J. 2262 (Para 17)
2. *Kuju Collieries Ltd v. Jharkhand Mines Ltd and others*: AIR 1974 SC 1892 (Para 18)

JUDGMENT

K. MURALI SHANKAR, J.: - 1. The Criminal Appeal is directed against the judgment made in C.C.No.32 of 2017 dated 04.01.2018 on the file of the Fast Track Magistrate Court, Srivilliputtur, acquitting the respondent for the offence under Section 138 of the Negotiable Instruments (hereinafter referred as 'NI') Act.

2. The appellant / complainant filed a private complaint under Section 200 Cr.P.C. against the first respondent / accused for the alleged offence under Section 138 r/w 142 of the NI Act.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the trial Court.

4. The case of the complainant is that the accused was earlier working in mechanical section of Tamil Nadu State Transport Corporation (hereinafter referred as 'TNSC') depot at Virudhunagar and the complainant had acquaintance with one Madamuthu of

a Srivilliputtur, who retired after serving in the computer section of TNSTC depot, where the accused was working. The accused informed the complainant that he was holding important post in the Transport Corporation Labour Union and he is having good influence through Labour Union and that he would arrange conductor job to the complainant and demanded Rs.3 lakhs for the same. The complainant believing the words of the accused had arranged and paid Rs.3 lakhs on 10.02.2016 in the presence of the said Madamuthu at TNSTC depot Virudhunagar but the accused has failed to arrange the job, as agreed by him. When the complainant along with the said Madamuthu approached the accused several times and demanded to return the amount received by him, the accused agreeing to return the same had issued a cheque dated 31.12.2016 drawn on State Bank of India, Aruppukkottai Branch for discharging the amount due by him. When the complainant presented the cheque on 02.01.2017, he was informed by the bank authorities that the cheque is an old and invalid one. When the same was informed to the accused, he issued another cheque dated 28.02.2017 for Rs.3 lakhs drawn on State Bank of India, Virudhunagar Branch. When the said cheque was presented for collection, the same was returned dishonored for want of sufficient amount in the bank account of the accused. The complainant has then sent a legal notice dated 14.03.2017 directed the accused to pay the amount covered by the cheque but the accused having received the legal notice on 20.03.2017, neither sent any reply nor complied with the notice demand. Hence, the complainant was constrained to lodge the above complaint for the offence under Section 138 r/w 142 of the NI Act.

5. The learned Magistrate, after compliance with the mandatory requirements, had taken the case on file in C.C.No.32 of 2017 and ordered for issuance of summons to the accused. After appearance of the accused, copies of records were furnished to him and on being questioned, the accused pleaded not guilty and hence, trial was ordered.

6. During trial, the complainant examined himself as P.W.1 and one Madamuthu as P.W.2 and exhibited 5 documents as Ex.P.1 to Ex.P.5. After the closure of complainant's side evidence, the accused was examined under Section 313(1)(b) Cr.P.C. with regard to the incriminating aspects as against him in the evidence adduced by the complainant and the accused denied the same as false and stated that he is having defence evidence but subsequently, he has not let any

evidence.

7. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, passed the impugned judgment dated 04.01.2018 by holding that the cheque in dispute was not issued for discharging the legally enforceable debt or liability and as such, Section 138 of the NI Act will not get attracted, acquitted the accused under Section 255(1) Cr.P.C. Challenging the impugned judgment of acquittal, the complainant has preferred the present appeal.

8. The learned counsel appearing for the complainant would submit that the debt or liability under Section 138 of the NI Act would only mean the legally enforceable debt or other liability, that the accused admitted his liability during the course of cross-examination of P.W.1, that though the complainant has alleged that he gave the amount for getting a job, the present complaint was not filed on the basis of the said agreement but only on the basis of the cheque subsequently issued, which gives a different cause of action and moreover, the present complaint came to be filed only on the basis of the second cheque allegedly issued by the accused and not with respect to the first cheque which was returned as old and invalid and that the learned Magistrate, without considering the above aspects in proper perspective, has come to an erroneous decision that the cheque was not issued towards legally enforceable debt and acquitted the accused.

9. The learned counsel appearing for the accused would submit that Ex.P.1-cheque was not issued towards discharge of a legally enforceable debt and even according to the complainant, it was issued to repay money obtained by the accused for securing a job, which is opposed to public policy and that therefore, it does not constitute a legally enforceable debt and the accused cannot be convicted under Section 138 of the NI Act.

10. Considering the above submissions, the sole issue to be determined is whether the Ex.P.1-cheque for Rs.3 lakhs issued by the complainant to the accused was towards the discharge of a legally enforceable debt or liability.

11. It is pertinent to note that the complainant in his complaint has specifically stated that he gave Rs.3 lakhs to the accused for getting conductor job in TNSTC. The complainant, while deposing as P.W.1, would reiterate the complaint contentions and his witness P.W.2 would also reiterate the very same version that the amount of Rs.3 lakhs was given to the accused for securing a job for the

a complainant. As rightly pointed out by the learned counsel appearing for the accused, such payment for securing Government employment would be considered a bribe and is opposed to public policy.

b 12. It is necessary to refer the legal maxim "*in pari delicto potior est conditio possidentis*" translates to "in equal fault, the condition of the possessor is better". This doctrine means when the parties to a dispute are equally at fault or equally favour for an immoral act, the Court will not assist either party and the one, who mainly possesses the property or benefits of the transaction, will retain it. This doctrine applies when both parties involved in a wrongful act or transaction are equally to blame and it must deter individuals from engaging in illegal or immoral activities by demonstrating that they will not receive help from the legal system if they are caught in their own fault. In India, this maxim is closely linked to the principles of equity, justice and good conscience and its application is primarily seen in void contracts, particularly those rendered void due to illegality or fraud.

c 13. Section 23 of the Indian Contract Act, 1872 declares agreements with unlawful consideration or objects as void and the above section is extracted hereunder for better appreciation:-

e "23. *What consideration and objects are lawful, and what not – The consideration or object of an agreement is lawful, unless – it is forbidden by law; or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.*"

f 14. Section 2(g) of the Indian Contract Act defines a void agreement as an agreement that is not enforceable by law. In other words, a void agreement has no legal effect, meaning cannot be enforced by the Court law and does not create any legal rights or obligations between the parties. Section 10 of the Indian Contract Act defines when an agreement become a contract by outlining the essential elements: free consent of parties, who are competent to contract, for a lawful consideration and a lawful object and not being expressly declared void.

g 15. It is pertinent to note that for the present issue, illustration (f) to Section 23 of the Indian Contract Act gives a fitting answer,

h "Section 23...

Illustrations

...

(f) A promises to obtain for B an employment in the public service and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful." a

16. In our case also, the agreement between the complainant and the accused is to be considered as void, as the consideration of Rs.3 lakhs was in the nature of an illegal gratification and was unlawful. b

17. The learned counsel appearing for the accused would rely on a decision of Delhi High Court in "*Virender Singh Vs. Laxmi Narain and another* reported in 2007 *Crl. L.J. 2262*", wherein also, the complainant gave a sum of Rs.80,000/- to the accused and his father for the purpose of securing a job for the complainant's nephew in Haryana Police and since job was not made available, the accused admitted the liability and issued a cheque and when the cheque was dishonored on presentation, complaint under Section 138 of the NI Act came to be filed. The relevant passage, which was also referred in the impugned judgment, is extracted hereunder:- c

"In the present case neither party is a victim of exploitation. Both had voluntarily and by their free will joined hands to flout the law. Therefore, in terms of the Supreme Court decisions in Sita Ram v. Radha Bai (supra) and Mohd. Salimuddin (supra) themselves, the parties being in pari delicto, the doctrine would apply and the sum of Rs.80,000/- could not be recovered in a court of law. Meaning thereby that there did not exist any legally enforceable debt or liability for the discharge of which it could be said that the cheque in question was issued. Consequently, Section 138 of the said Act would not be attracted. This legal position was not appreciated by the courts below and it is for this reason that they fell into error. That being the case, the conviction of the petitioner is set aside. It is, however, made clear by the learned Counsel for the petitioner that the sum of Rs.1 lac, which had been deposited pursuant to the orders by the court below, has already been withdrawn by the respondent No.1 and that he would not be pressing for its return. The learned Counsel for the petitioner also submits that to maintain his bona fides, he would be paying a further sum of Rs.20,000/- within two months to the complainant/respondent No.1. He submits that the said sum will be paid to the complainant/respondent No.1 directly." d

18. Section 65 of the Indian Contract Act establishes the doctrine of restitution, requiring any person who received an e

- a advantage under an agreement that is later discovered to be void, or a contract that becomes void, to restore that advantage or make compensation to the person from whom it was received. The core principle is to prevent unjust enrichment, ensuring that no party benefits unfairly from a contract that is no longer legally enforceable. It is pertinent to note that Section 65 of the Indian Contract Act will
- b apply only when an agreement, at a subsequent stage, is discovered to be void by one person or other. To put it in other way, Section 65 of the Indian Contract Act will never come into play if the contract was *void ab initio*, that is, void from the very beginning. The Hon'ble Supreme Court in the case of "*Kuju Collieries Ltd Vs. Jharkhand*
- c *Mines Ltd and others* reported in *AIR 1974 SC 1892*" has held that when an agreement that was discovered to be void at a later stage will invite Section 65 into the picture, and in such a case, the advantageous person is bound to restore the disadvantaged party.
- d Where the agreement was void and the parties knowingly entered into such a void agreement, the parties cannot claim restitution. In the present case, the agreement to secure a job in exchange for money is opposed to public policy, rendering it *void ab initio*, i.e., from the very beginning. Consequently, Section 65 of the Indian Contract Act is inapplicable. This scenario falls squarely within the illustration to
- e Section 23 of the Indian Contract Act, which renders such agreements unlawful.

19. In light of the legal position, since the complainant's case is based on a specific claim that the money was given for securing a
- f TNSTC job and the cheque was issued to repay this amount, this Court holds that there is no legally enforceable debt or liability.

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