

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2083 OF 2009

JUDGMENT:

The present Criminal Revision Case is filed by the complainant viz., D. Praneeth Kumar, aggrieved by the order dated 29.09.2009 passed by the learned IV Additional Chief Metropolitan Magistrate, Hyderabad, in S.R. No.2160 of 2009, filed under Section 200 of the Code of Criminal Procedure, 1973, alleging the offence punishable under Section 138 of Negotiable Instruments Act, 1881.

2. The learned Magistrate, at the stage of S.R., dismissed the complaint refusing to take cognizance. The order would show that the revision petitioner gave Rs.8,00,000/- to respondent No.1 - accused viz., K. Harinath, in order to secure a job and when the same was not fructified, respondent No.1 has issued a cheque in dispute towards discharge of the amount received by him. The learned Magistrate observing that it falls within the meaning of bribe, in which case, it is opposed to public policy, and, therefore, the cheque in question which was issued in favour of the complainant cannot be the one for discharge of legally enforceable debt. He did not agree with the decision relied on by the revision petitioner in **Sri Tarsem Singh v. Sri Sukhminder Singh** [AIR 1988 SC 1400]. He observed that all the void contracts cannot be treated at par under one straight-jacket formula; out of the 'void contracts' some fall under the category of

‘opposed to public policy’, and the present instance is one such instance falling within the category of ‘opposed to public policy’ and such void agreements cannot be enforceable even to recover money.

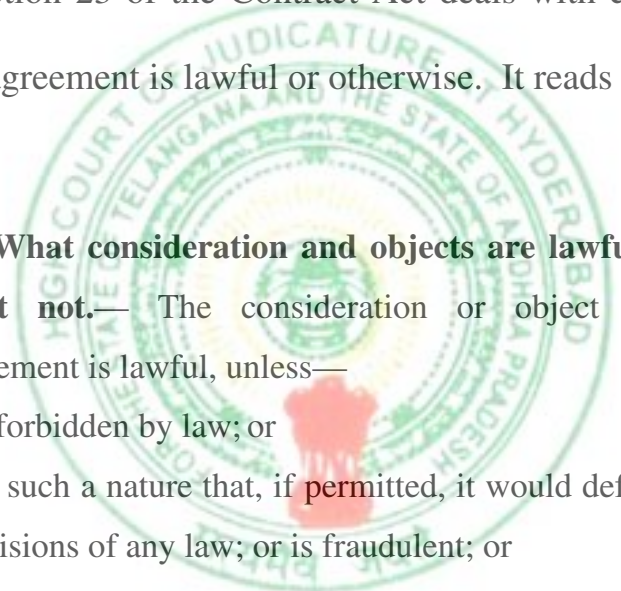
3. Though, the revision petitioner questioned the order under challenge that the learned Magistrate did not properly appreciate the fact that he is not seeking to enforce any obligation arising out of the contract and promised to make job and not providing job having taken the amount cannot be treated as ‘opposed to public policy’ and since the cheque was issued, it attracts the offence punishable under Section 138 of NI Act. The learned counsel again referred to the very same decision referred supra, in the grounds of the present revision also.

4. It is no doubt true, a cheque was issued. It was issued in connection with returning the money taken from the revision petitioner for securing a job. When it is not a hand-loan or loan as such, the question of enforcing legally enforceable debt coming into vogue in a case of this nature does not arise. The remedy is elsewhere, but not by filing a complaint under Section 138 of NI Act.

5. The learned counsel would, of course, submit that Section 65 of the Indian Contract Act, 1872 (for short ‘Contract Act’), provides that even when an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage

under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it. Based on the said provision, it is his submission that though, the transaction is void, still, since respondent No.1 derived advantage, the cheque issued by him cannot be thrown away. But, the learned counsel would fairly submit that Section 23 of the Contract Act also requires to be looked into.

6. Section 23 of the Contract Act deals with consideration or object of an agreement is lawful or otherwise. It reads thus:



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.

7. In the present case, since the amount received by respondent No.1 was in relation to securing a job and thereby deceiving the revision petitioner - complainant, certainly, the transaction between

them cannot be termed as lawful. When it falls within the purview of Section 23 of the Contract Act, it cannot be said that there was a debt existing and that too the debt being legally enforceable debt so as to apply the situation contemplated by the provisions of Section 65 of the Contract Act.

8. Hence, what has been observed by the learned Magistrate in the order under challenge cannot be faulted since the same does not suffer from any irregularity or illegality so as to set it aside.

9. Therefore, the Criminal Revision Case is dismissed, at the admission stage itself.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the present revision stand dismissed.

A. SHANKAR NARAYANA, J
November 21, 2017.

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