
CRITICAL ANALYSIS OF UPENDRA KUMAR V. DON FINANCE CORPORATION (AIR 2009 KAR 184)

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What is the meaning of 'Banking', 'Bank' and a 'Banker'?

The term 'Banker' should be simplified as a person, company or a firm portraying itself as a 'bank' or 'banker' in its description and every such company accepting deposits of money, subject to withdrawal by order, cheque or draft.

Section 3 of the Negotiable Instruments Act, 1881 defines 'Banker' as, "banker includes any person acting as a banker and any post office savings bank".

The term '**Banker**' is defined under **Section 7(1) of The Banking Regulations Act, 1949** as, "No company other than a banking company shall use as part of its name [or, in connection with its business] any of the words "bank", "banker" or "banking" and no company shall carry on the business of banking in India unless it uses as part of its name at least one of such words."

Section 5(b) of The Banking Regulation Act, 1949 defines '**banking**' as, "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise"

Section 5(c) of The Banking regulations Act, 1949 defines '**Banking Company**' as, "banking company means any company which transacts the business of banking".

Case Information

Karnataka High Court

Case No.- Criminal Revision Petition No. 623/2006

Judge- Mohan Shantangoudar, J.

Acts- Section 138 Negotiable Instruments Act, 1881

Section 3 Negotiable Instruments Act, 1881

Banking regulation Act, 1949

Facts of the case

1. In the present case the accused had taken loan from the complainant. And the accused had an account in Mangala Credit Co-operative Society Ltd. And for the repayment of the loan, the accused had issued a cheque dated 11th November, 1996 which was drawn on Mangala Credit Co-operative Society Ltd., Mangalore. The cheque was deposited by the complainant in his bank, but the cheque was dishonoured by the bank. The reason given by the complainant's bank was that there were insufficient funds in the accused bank account. Here the accused defence was that he had paid the entire amount to the complainant but the complainant misused the cheque.
2. After examination of the parties, it was clear that the accused had paid the interest, but he was liable to pay the principal amount of the loan. So here both the courts held that the accused is punishable under Section 138 of the Negotiable Instruments Act, 1881.
3. In the present case the respondent is the complainant and this revision petition is filed by the accused person.
4. This case is registered under **Section 138 of the Negotiable Instruments Act, 1881**. Here the petitioner has committed an offence under Section 138 of the Negotiable Instruments Act, 1881 and is tried for the same. The case is tried by the learned V.J.M.F.C, Mangalore.
5. The trial court in its order dated 29th October 2004, convicted the accused and sentenced him to imprisonment for one month and to pay fine of Rs. 40,000 to the complainant.
6. In the Criminal Appeal No. 385/2004, dated 15th February, 2006; the order and Judgement of the trial court is confirmed by the Sessions Court of Dakshina Kannad, Mangalore.
7. The petitioner has filed a revision petition, questioning both the judgement and the orders.

Case of the Complainant

1. The convicted accused had borrowed a sum of money of Rs. 15,000/- on 28th October, 1993 and Rs. 6,000/- on 2nd December, 1993 from the complainant in this case. And had agreed to pay an interest of 23% per annum.

2. For repaying the loan amount, the accused had issued a cheque dated 11th November, 1996. This cheque was drawn on Mangala Credit Co-operative Society Ltd., Mangalore. The said cheque was for Rs. 24,168/- in the favour of complainant.
3. When the complainant had presented the cheque to the bank, the cheque was dishonoured by the said bank because of "insufficient funds".
4. Then a complaint was filed by the aggrieved person and then the complainant was examined as PW-1. And on behalf of the accused, two witnesses were examined, one of witness was the accused himself.

Reply of the accused

1. The petitioner contended that the cheque was not presented to a bank, but rather to a Co-operative Society, and that because the cheque was not presented to the Banker, the proceedings are void.

Case Study Evaluation

In this case, the main issue was that, whether Mangala Credit Co-operative Society Ltd. Is a Banker or not under the definition given under the Negotiable Instruments Act, 1881?

A. Understanding the definition of a 'Banker' as per the Negotiable Instruments Act, 1881.

The definition of "banker" provided in **Section 3** of the Negotiable Instruments Act is important in this circumstance. The term "banker" has the following definition:

Section 3 of the Negotiable Instruments Act, 1881: "Banker - Banker includes any person acting as a Banker and any post office savings bank."

As a result, the definition of "Banker" under the Negotiable Instruments Act has been expanded to cover anyone operating in the capacity of a banker. The definition also includes post office savings bank. Banking is a concept that has evolved over time. Banking is a business that deals with cash, credit, and other forms of money. Banks provide a secure environment for storing excess cash and credit. Savings accounts, Certificates of Deposit, and checking accounts are all available. Financial institutions that do not offer both lending and depositing services, and hence are not considered full-fledged banks. A banker is a person who makes a business by taking other people's money on deposit, returning it on demand, discounting other people's

notes, and printing their own for circulation. Who conducts the business is generally done by a bank. In layman's terms, a banker is someone who works in the banking industry. Because the banker's operations are of high value and integrity, it is critical that he be a wise man because he is dealing with the society's money.

According to **Dr. Hart**, "A 'Banker' is one who in the ordinary course of his business honours cheques drawn upon him by persons from and for whom he received money on current accounts."¹

According to **Sir John Paget**, "No person or body corporate or otherwise can be a banker who does not: take deposit accounts. Take current accounts, issue and pay cheques drawn on himself and collect cheque for his customer."

"The essential function to enable a person, firm, or institution, to be regarded as a **banker** or a bank, is that of receiving current deposits against which cheques may be drawn."²

B. Whether Mangala Credit Co-operative Society Ltd. Is a Banker or not as per the definition given under the Negotiable Instruments Act, 1881?

Mangala Credit Co-operative Society Ltd. Is not solely a Co-operative society, but it is a banker doing banking business also. Referring to Section 3 of The Negotiable Instruments Act, 1881, it states that banker includes any person acting as a banker. It is also important to be noted that bank always does not mean a profit-making institution, the sole objective of a bank is not only profit making. So, we cannot say that Co-operative Societies carrying on banking business are not banks. The term 'Banker' is not limited to the definition given under Banking Regulation Act, 1949; rather the definition given under the Negotiable Instruments Act, 1881 is more important and needs to be focused on in the present case.

The definition given under Negotiable Instruments Act, 1881 has such a broad and expanded definition that it includes anyone functioning as a banker. Though Mangala Credit Co-operative Society Ltd. has not obtained permission from the Reserve Bank of India to convert itself into Co-operative Bank but still it will be considered as a bank because it carries on a banking business.

¹ Hart in his Law of Banking, Vol. I, 4th Edn. 1931, page 1

² Foley v. Hill, (1948) 2 HLC 28 (D)

The courts have found that as Mangala Credit Co-operative Society Ltd. was into banking business it is a banker. So therefore, the accused is guilty under Section 138 of Negotiable Instruments Act, 1881 and he is punishable under this section.

C. Understanding Section 138 of Negotiable Instruments Act.

Section 138 of NI Act has brought credibility to the business transactions. It establishes the criminal and civil liability of the wrongdoer, so therefore the efficiency of functioning of transactions has increased.

In case of a Civil liability the defaulter is liable to pay twice the money of the amount that was dishonoured.

In the Criminal liability the punishment comes with imprisonment, here the offence is bailable, non- cognizable and compoundable.

Section 138 of the Act imposes strict liability on the defaulter. Therefore, there are solutions for recovery of the money under this act and there is a remedy for the injustice faced by the aggrieved party.

Conclusion

The Negotiable Instruments Act's definition of "banker" has been enlarged to include anyone acting as a banker. Banking has evolved over time. Banking is the business of dealing with money in the form of currency, credit, and other forms. Banking is not restricted only to accepting deposits and lending money, but it is more than that. Negotiable Instruments has given a broader angle to the meaning of a banker. Any institutions doing banking business come under the definition of a banker as per this Act.

References

1. Upendra Kumar v. Don Finance Corporation, AIR 2009 Kar 184
2. Bare Act: Negotiable Instruments Act, 1881
3. Bare Act: Banking Regulation Act, 1949
4. Manupatra
5. Tannan's Banking Law (By- M L Tannan)
6. Law of Banking (By- Dr. Hart)