

**SORIS
VS
OFFICE IN CHARGE - CRIMINAL
INVESTIGATIONS DEPARTMENT**

COURT OF APPEAL,
ABEYRATNE J,
IMAM J,
CA (PHC) APN 185/2004
HC (REV) BADULLA 57/04
M. C. BANDARAWELA 36415
JANUARY 26, 2005
MARCH 1, 2005

Debt Recovery (Sp. Pro) Act, No. 2 of 1990 - as amended by No. 9 of 1994-Section 2 (1) (2) Section 25 (1) (6), S 30 (a) Scheduled Institution ? - Lending Institutions - Co-operative Society - is it a Schedule Institution ? - Cheques issued for the society being dishonoured due to lack of funds - Applicability of the provisions of the Debt Recovery Law ? - What is a Debt ?

On a complaint made by the General Manager of the Co-operative Society the Criminal Investigations Department commenced investigations, with regard to the allegation that the Petitioner had cheated the Society in a sum of Rs. 5.4 Million. The basis of the complaint was that the cheques issued by the Petitioner for the purchase of seed potatoes from the Society were dishonoured for lack of funds. The 'B' Report filed alleges that the petitioner had committed an offence under Section 25 (1)(a) of the Debt Recovery Act. The Petitioner objected to the proceedings on the ground that, the Society is not a scheduled institution under the Debt Recovery Act. This was over-ruled by learned Magistrate, and in the Revision Application filed in the High Court, Court refused to issue Notice.

HELD:

- (i) The Debt Recovery (Sp. Pro) Act 2 of 1990, is comprised of five parts, where parts 1-4 relate to transactions of a civil nature by and between the lending institutions and part 5 deals with the criminal liability attached to the money transactions between the lending institutions and a person or body of persons.
- (ii) A lending institution is defined in Section 30 of the Act and the Udalapalatha society does not fall within the interpretation of lending institution ; reference to the words lending institution and institution refer to one and the same.
- (iii) It is manifestly clear that the word "Debt" is used in relation to a lending institution and related to transactions in the course of bank-

ing, lending and financial or other allied business activities. The word debt cannot be construed to any debt.

APPLICATION in Revision from an Order of the High Court of Bandarawela.

Case referred to :

1. C. N. Mackie and Co. vs Translanka Investment Ltd., 1995 2 Sri LR 6

H. G. Hussain with Ms. A. M. K. Sepali for Accused Petitioner Petitioner.
Buvenaka Aluvihare S. S. C., with Achala Wenagappuli S. C., for the
Respondent Respondents.

Cur. adv. vult

March 30, 2005

IMAM, J.

This revision application has been made by the Accused-Petitioner-Petitioner (hereinafter referred to as the Petitioner) to set aside the order of the Learned High Court Judge of Badulla dated 14.06.2004, amongst other reliefs, sought for. The facts of this case are briefly as follows. On a complaint made by the General Manager of the Udapalatha Multi-purpose Co-operative Society (hereinafter referred to as the MPCS), the Criminal Investigation Department commenced investigations with regard to the allegation that the petitioner had cheated the MPCS in a sum of approximately Rs. 5.4 million. The basis of the complaint was that cheques issued by the Petitioner for the purchase of seed potatoes from the MPCS were dishonoured for lack of funds. Consequently the CID filed a 'B' report against the petitioner in the Magistrate's Court of Bandarawela alleging that he had committed an offence under section 25(1)(a) of the Debt Recovery (Special provisions) Act, No. 2 of 1990 as amended by Act No. 09 of 1994.

Initially counsel who appeared for the petitioner among other grounds raised an objection that the charge cannot be maintained, as the court had no jurisdiction to hear the case as the MPCS is not a scheduled Institution as described in section 30 of Act, No. 02 of 1990. Although the

Learned Magistrate made an order on 23.10.2003 to the prosecution to file an amended charge, he nevertheless on 05.03.2004 subsequent to an application made by the prosecution cancelled his earlier order, thereby disallowing the initial objection raised by Petitioner's counsel, and fixed the matter for Trial. The Petitioner aggrieved by this order, preferred a revision application to the High Court of Badulla. The Learned High Court Judge of Badulla by his order dated 14.06.2004 refused to issue Notice, and dismissed the application. The petitioner aggrieved by this order of the learned High Court Judge tendered this revision application to this court.

Both counsel invited this court to make an order with regard to the applicability of section 25(1)(a) of the Debt Recovery Act, No. 02 of 1990. It was submitted on behalf of the petitioner that the aforesaid section deals with debts in relation to the institutions referred to in section 30 of Act, No. 02 of 1990. However learned Senior State Counsel appearing for the respondents submitted that the relevant section cannot be narrowly construed, but has to be examined independently, from the other provisions of the aforesaid Act. Section 25(1)(a) of the said Act refers to "Any person who (a) draws a cheque knowing that there are no funds or not sufficient funds in the bank to honour such cheque or" The Learned High Court Judge in his order referred to this section and further held that the type of person who receives the cheque (payee) is immaterial for a prosecution in terms of the section. Counsel for the petitioner submitted in this Court that section 25 can only be invoked where the cheque concerned was drawn in favour of a "Scheduled Institution" within the meaning of the Act, and that the objective of the legislature was to streamline the procedure with regard to the recovery of debts by "lending institutions" and thus any transaction which does not involve a lending institution is outside the parameters of the Act.

Learned Senior State Counsel who appeared for the respondents did not agree with this view.

It is clear on a perusal of section 25(1)(a) and (b) that no reference is made to "lending Institutions" nor to "Recovery of Debts", but refers to a situation where "a person draws a cheque (a) Knowingly without or insufficient funds to meet the cheque and thereby causes the same to be

dishonoured or (b) countermand a cheque with a dishonest intention

Bindra on Interpretation of Statutes (9th edition, p 38) states The "Construction of the Statute cannot be limited by its title. The true nature of the law is to be determined not by the name given to it or by its form, but by its substance. Where the language of the enactment is clear, its construction cannot be affected in any way by the consideration of the title of the Act." Thus section 25 of the Act is clearly not ambiguous.

In the case of *C. W. Machie and Co. vs Translanka Investment Ltd.*⁽¹⁾ *Ranaraja. J.* in reference to certain dishonoured cheques issued by the respondent, observed that section 25 of the Act makes such conduct on the part of the drawer an offence. It is noted that neither party in this case is a lending institution.

However on perusal of the Debt Recovery (Special Provisions) Act, No. 02 of 1990 section 2(1) Part 1 which refers to institution of Action, states that "A Lending institution (hereinafter referred to as the institution" may subject to the provisions of sub-section (2) recover debt due to it by an action instituted in terms of the procedure laid down by this Act, in the District Court....." Section 2(2) states that "No action shall be instituted by an institution in terms of the procedure laid down by this Act for the recovery of any loan or debt as amended by Act No. 09 of 1994....." Section 4(1) states that "The Institution suing shall on presenting the plaint file an affidavit to the effect that the sum claimed is justly due to the institution from the defendant and shall in addition produce to the Court the instrument, agreement or document sued upon or relied on by the institution" Thus from the institution of action onwards under the aforesaid Act, certain procedures are set out which have to be fulfilled for the relief obtained. Moreover the charge sheet presented in the Magistrate's Court against the Petitioner specifically refers to section 25(1)(a) of the Debt Recovery (Special Provisions) Act No. 02 of 1990 as amended by Act No. 09 of 1994. Hence the procedures of the aforesaid Act have to be followed. The Debt recovery (Special Provisions) Act, No. 02 of 1990 is comprised of five parts where parts 1 to 4 relate to transactions of a civil nature by and between the lending institutions, and part 5 deals with the criminal liability attached to the money transactions between the said lending institution, and a person or body of persons. A lending institution is defined in section 30 of the aforesaid Act, and the "Udopalatha MPCs" does not fall within

the interpretation of Lending Institution. Furthermore the reference to the words Lending Institution and institution refer to one and the same. It is manifestly clear that the word 'Debt' is used in relation to a lending Institution and related to transactions in the course of banking, lending, and financial or other allied business activities. Hence the word debt cannot be construed to any debt. The terms "Any Person" is described in detail in Stroud's Judicial Dictionary.

For the aforesaid reasons this Court permits the revision application and sets aside the order of the Learned High Court Judge of Badulla dated 14.06.2004, in Application No. 57/2004. Furthermore the Petitioner is permitted to issue notice on the Respondents, and is entitled to the reliefs sought for in the prayer to the Petition presented to this Court.

Abeyratne, J. I agree.

Application dismissed.
