

SCC No. 279/2020

Ashish Rathi V/s. Sayaji Uba Khan
Memorial Trust & ors.

ORDER BELOW EXH.01

The present complaint is filed under section 138 of the Negotiable Instruments Act, 1881 (In short, N. I. Act) against trustees of registered trust named “Sayaji U Ba Khin Memorial Trust”.

02 I have perused the complaint and verification of complainant. It appears that the alleged cheque dated 30/12/2019 for amount of Rs. 15,00,000/- was issued in favour of complainant by the abovenamed trust under the signatures of authorized trustees for consideration of sale deed in their favour. The alleged cheque was dishonored and notice was duly served on all trustees registered under the abovenamed trust. In spite of due service of notice, the defaulted amount was not paid by the trustees within stipulated period as mentioned in section 138 of the N. I. Act and hence, the complainant is constrained to file present complaint.

03 So as to the question of issue process against trustees is concerned, it is important to analyze whether the trust is juristic person under the ambit of section 141 of the N. I. Act. This question is resolved by the recent judgment of Hon’ble High Court of Karnataka in case of *Babu Rao Mahanthappa Shegunasi v. The Director, Directorate Distance Education, Kuvempu University and ors; MANU/KA/2966/2022*, in which it was held that “A trust, either private or public/charitable or otherwise, is a juristic person who is liable for punishment for the offence punishable under section 138 of the N. I.

Act. A trust, either private or public/charitable or otherwise, having either single trustee or two or more trustees, is a company in terms of section 141 of the N. I. Act. For the offence under section 138 of the N. I. Act, committed by the Trust, every trustee, who was in-charge of the day-to-day affairs of the trust shall also be liable for punishment besides the trust.” Therefore, it appears that the trust is a juristic person falling within the ambit of section 141 of the N.I. Act and trustees are liable for punishment envisaged under section 138 of the N.I. Act. In the present case, ingredients of section 138 are satisfied and it is necessary to issue process against trustees as alleged accused. Accordingly, I passed following order:

ORDER

Issue process against all trustees as alleged accused under section 138 of the Negotiable Instruments Act, 1881.

Date :- 11/10/2022

(S.G.Kuvalekar)
Jt. Judicial Magistrate F.C.,
Igatpuri