Where a cheque is allegedly issued in the name of a company after the company has already been struck off and dissolved, the cheque is not a legally enforceable instrument and prosecution under Section 138 of the NI Act is not maintainable against the former director

The **Karnataka High Court** in the case of **Rakesh Ramakanth vs Somashekara Gowda R.G [Criminal Petition No.3024 of 2024] dated July 01, 2026**, has held that where a cheque is allegedly issued in the name of a company after the company has already been struck off and dissolved, the cheque is not a legally enforceable instrument and prosecution under Section 138 of the NI Act is not maintainable against the former director. The Court clarified that this is different from a case where the cheque was validly issued while the company existed and only later, during the pendency of proceedings, the company goes into liquidation, winding up, or faces some other legal impediment. In such later-event cases, proceedings may continue against the persons covered by Section 141, but not where the very cheque itself post-dates the dissolution.

The Court found that the company on whose account the cheque was drawn had already been struck off and dissolved long before the cheque was allegedly issued. The Court observed that once a company is struck off and dissolved, it loses its juristic personality and cannot validly operate as a legal entity unless restored in accordance with law. A cheque allegedly issued in the name of such a dissolved company after its dissolution cannot become a legally enforceable instrument and would be void ab initio. Therefore, proceedings under Section 138 of the NI Act cannot be sustained on the basis of such a cheque.

The Court drew support from decisions dealing with moratorium, liquidation and winding up, and explained that where a person no longer has legal control over the company or its bank account, the statutory ingredients of Section 138 are not satisfied. It emphasized that Section 138 requires the cheque to be drawn on an account “maintained” by the drawer, and this presupposes legal authority and control over the account at the relevant time. In the present case, the company had ceased to exist in 2011 itself, so the former director could not be made criminally liable for a cheque allegedly issued in 2017 in the company’s name.