

(1999) 09 AP CK 0027

In the Andhra Pradesh High Court

Case No : Criminal P. No. 3276 of 1999 and Batch

B. Manipal Reddy

APPELLANT

Vs

State of A.P. and another

RESPONDENT

Date of Decision : 08-09-1999

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 34
Negotiable Instruments Act, 1881 (NI) — Section 138, 141

Citation : (1999) 6 ALD 175 : (1999) 2 ALD(Cri) 796 : (2000) 3 ALT 271 :
(2000) 1 ALT(Cri) 217 : (1999) 3 APLJ 174 : (2000) 2 CivCC 194 : (2001) 103
CompCas 158

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

Advocate : Mr. Vedula Srinivas, for the Appellant; Public Prosecutor and Mr. P.R. Balarami Reddy, for the Respondent

Judgement

1. These petitions are filed u/s 482 of Code of Criminal Procedure (Cr.PC) seeking quashing of the proceedings in CC Nos.484, 479, 481, 482, 483, 480 and 768 of 1997 respectively, on the file of IV Metropolitan Magistrate, Hyderabad, in which the petitioner accused is facing charge u/s 138 of Negotiable Instruments Act (for short, the Act).

2. It appears that the Company, which is represented by the petitioner herein, had agreed to allot some of its shares by private placement out of promoters quota in favour of the complainant and received certain amounts. Later the accused failed to allot the said shares and under a mutual agreement he agreed to repay the amounts received towards the price of shares. Accordingly, towards repayment of the said amount, a cheque for the requisite amount in each case was given by the Company, which is said to be represented by the accused, to the complainant. The cheques in question were presented for realisation and they were returned on the ground of insufficiency of funds to the credit of the Company, which the accused represents. A notice u/s 138 of the Act was sent by the complainant and inspite of receipt of the notice, as no payment was made

the complaints as mentioned above have been filed.

3. Learned Counsel for the petitioner seeks quashing of the proceedings mainly on the ground that the requirements of Section 141 of the Act are not complied with in the complaint. The contention is that the petitioner-accused is merely a Director of the Company and the complaint, a copy of which has been filed with the petition, does not mention anything as to how the petitioner-accused was in-charge of the affairs of the Company and was responsible to the Company. A reading of the complaint would show that there is no averment that the petitioner-accused was in-charge of and was responsible to the Company.

4. Learned Counsel for respondent No.2, Sri P.R. Balarami Reddy, points out that the complaint itself has described the accused as the Managing Director of the Company. Apart from this, it is brought to the notice of this Court that the agreement, which is said to be the basis for the liability of the accused for payment, a copy of which has been filed with the relative petitions, also describes the petitioner as Managing Director of the Company. Learned Counsel for respondent No.2 then invites my attention to the reply sent on behalf of the accused to the notice sent by the complainant u/s 138 of the Act, a copy of which has been filed as material along with the counter filed by respondent No.2. The authenticity of this reply is not disputed by the learned Counsel for the petitioner except stating that it was sent by the Company and not by the petitioner-accused in his personal capacity. Even this document mentions that the Company, on whose behalf the reply was sent is represented by the petitioner-accused as its Managing Director. The contention of the learned Counsel for respondent No.2 is that when an accused happens to be the Managing Director of the Company that in itself implies that he was in-charge of and was responsible to the Company. The mere omission to specifically state so in the complaint and failure to reproduce the words occurring in Section 141 of the Act would not vitiate and render it liable to be quashed on the ground on non-compliance of Section 141 of the Act.

5. There is some force in the contention advanced by learned Counsel for respondent No.2. It is true that Section 141 of the Act contemplates that where the Company happens to be the accused, then apart from the Company every person, who was in-charge of and was responsible to the Company, shall also be liable for the offence u/s 138 of the Act, besides the Company itself.

6. Learned Counsel for the petitioner relying on the judgment of the Supreme Court in *State of Haryana v. Brij Lal Mital*, Volume 93 Company Cases, contends that unless there is an averment in the complaint in terms of Section 141 of the Act a person who is merely a Director of the Company cannot be held liable for the offence u/s 138 of the Act.

7. It is true that in the above cited case *State of Haryana v. Brij Lal Mittal*, the Supreme Court did hold with reference to the provisions of Drugs and Cosmetics Act which has Section 34 in pari materia with Section 141 of the Act, that there

must be an averment indicating the applications of the provisions of the said Section 34 of Drugs and Cosmetics Act before a prosecution can be launched against a person, who is an employee or a Director of the Company. In that case, the accused, who was sought to be proceeded against, was described merely as a Director. It is obvious that every Director of a Company may not be in-charge of and responsible to the Company. Sometimes, even a person other than a Director may be in-charge of and responsible to the Company, but the question is whether this can apply to a Managing Director of the Company. Normally, by definition, a Managing Director is supposed to be in-charge of managing the Company and would obviously be responsible to the Company.

8. As seen above, in this case, not only the complaint describes the accused as the Managing Director of the Company, but also the agreement, which is the basis for the liability for payment of money on the part of the accused, describes him as Managing Director and even the reply notice sent by the Company, of which the accused is the Managing Director shows that he has been the Managing Director of the Company. Considering these circumstances, mere absence of an averment in the complaint that the petitioner-accused was in-charge of and was responsible to the Company does not justify quashing of the proceedings in these cases inasmuch as the petitioner-accused has been shown to be the Managing Director of the Company.

9. In the result, these petitions deserve to be dismissed and are hereby dismissed. However, I may add that the observations made in this order are specifically for the purpose of disposing of these petitions and they shall not be treated as findings on the questions of fact involved. It is for the trial Court to come to its own conclusions on the basis of evidence placed before it as to whether the petitioner-accused was really in-charge of and was responsible to the Company, notwithstanding his description as Managing Director.