
(2014) 08 AP CK 0092

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 740 of 2014

B. Ram Mohan Reddy

APPELLANT

Vs

C.V. Subba Rao

RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:

Evidence Act, 1872 — Section 114

General Clauses Act, 1897 — Section 27

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2014) 08 AP CK 0092

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Advocate : Adnan, Advocate for the Appellant; B. Vijaysen Reddy and Public Prosecutor, Advocate for the Respondent

Final Decision : Allowed

Judgement

Dr. K.G. Shankar, J.—The petitioner is the sole accused in C.C. No. 1158 of 2012 on the file of the XVIII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad. He seeks for quashment of the case. The 1st respondent is the complainant. He lodged a complaint with the XVIII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad that the petitioner issued a cheque for a sum of Rs. 3,500/- on 05-7-2009 and that the cheque stood bounced. The 1st respondent consequently laid the complaint, which was taken on file as C.C. No. 1158 of 2012. The petitioner sought for the quashment of the same.

2. The petitioner and the 1st respondent are tenant and landlord. There appears to be disputes between them. Whatever the reason be, the 1st respondent filed a rent control case against the petitioner for his eviction. He succeeded before the Trial Court, in the appeal as well as in the revision before the High Court. The petitioner approached the Supreme Court and obtained stay. Inter alia, it would appear that the Supreme Court directed the petitioner to deposit agreed rents every month and that it would also appear that there is a default clause. Hence,

albeit the amount involved is quite meager, other stakes are involved on both sides in this case.

3. The learned counsel for the petitioner submitted that after receipt of summons from the Court, the petitioner paid the amount covered by the cheque. The 1st respondent admitted the same. The learned counsel for the petitioner contended that the cause of action did not survive once the petitioner paid the money covered by the cheque. The learned counsel for the 1st respondent, on the other hand, submitted that the cause of action survives as the petitioner initially failed to honour the cheque and committed the offence u/s 138 of the Negotiable Instruments Act, 1881 (the N.I. Act, for short).

4. Both sides placed reliance upon C.C. Alavi Haji v. Palapetty Muhammed. In that case, a 3-Judge Bench of the Supreme Court considered various aspects of service of notice and the presumption u/s 27 of the General Clauses Act, 1897 as well as the presumption u/s 114 of the Indian Evidence Act, 1872.

5. The Supreme Court observed in C.C. Alavi Haji (1 supra) that u/s 27 of the General Clauses Act, if a notice is sent to the correct address of a party, it is deemed to be service on the party. The learned counsel for the 1st respondent contended that he sent statutory notice to the petitioner and that it therefore shall be deemed that the petitioner received the notice. On the other hand, the learned counsel for the petitioner submitted that in C.C. Alavi Haji (1 supra), it was observed that if the petitioner/drawer claims that he did not receive the notice sent by the drawee by post, if the drawer pays the money covered by the cheque within 15 days from the date of receipt of summons in the case, it would be tantamount to complying with the payment of cheque and that the cause of action for the offence u/s 138 of the N.I. Act would no more survive.

6. The learned counsel for the 1st respondent invited my attention to the further observations of the Supreme Court in C.C. Alavi Haji (1 supra) that the Court should follow the view in K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, . In that case, the Supreme Court observed that once notice was sent to the correct address, it would be deemed to have been served upon the other side in view of Section 27 of the General Clauses Act. However, the observation of the Supreme Court that Bhaskarans case of giving of notice and receipt of notice should be interpreted in accordance with the view in Bhaskarans case. Such observations are preceded by the observations of the Court that so long as the drawer pays the money covered by the cheque within 15 days of receipt of summons, the petitioner would not be liable for prosecution u/s 138 of the N.I. Act. The Court is very clear that whether the petitioner received the notice or is deemed to have received statutory notice is irrelevant so long as the petitioner claims that he did not receive the notice and so long he honours the cheque within 15 days of receipt of summons. In the present case, admittedly, the amount covered by the cheque was paid by the petitioner within 15 days from the date of receipt of summons. I therefore consider that the cause of action has not survived in C.C. No. 1158 of 2012 once the amount covered by the cheque

was paid by the petitioner.

7. The learned counsel for the 1st respondent placed reliance upon *Yaswitha Construction (P) Ltd. v. Chitta Subba Reddy*. In that case, the question whether statutory notice was sent to the correct address of the drawer or not arose for consideration and the Court invoked Section 27 of the General Clauses Act and held that once the notice was sent to the correct address, it is deemed to have been served upon the respondent.

8. In *C& C Enterprises, Hyderabad v. State of A.P.*, similar question arose where a statutory notice sent by the drawee was returned with an endorsement not claimed. Once again, a learned Single Judge of this Court drew the presumption u/s 27 of the General Clauses Act. However, in view of the decision of the Supreme Court in *C.C. Alavi Haji (1 supra)*, these decisions have no bearing regarding the question whether it should be presumed that the statutory notice was served upon the petitioner or not.

9. Consequently, this criminal petition is allowed. C.C. No. 1158 of 2012 on the file of the XVIII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad is accordingly quashed. The miscellaneous petitions, if any, pending in this petition shall stand closed.