
(1999) 09 AP CK 0122

In the Andhra Pradesh High Court

Case No : Criminal P. No. 3111 of 1999

Bupinder Lima and others

APPELLANT

Vs

State of A.P. and another

RESPONDENT

Date of Decision : 08-09-1999

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (1999) 6 ALD 143 : (1999) 2 ALD(Cri) 795 : (1999) 6 ALT 101 :
(2000) 1 CivCC 670 : (2000) 99 CompCas 424 : (2000) 1 RCR(Criminal) 129

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

Advocate : Mr. K. Srinivasa Reddy, for the Appellant; Public Prosecutor and Mr. Jalli Kanakaiah, for the Respondent

Judgement

1. Heard both sides.

2. This petition u/s 482 of Cr.PC has been filed for quashing the proceedings in CC No.194 of 1999 on the file of the X Metropolitan Magistrate, Secunderabad in which the petitioners are sought to be prosecuted for an offence u/s 138 of the Negotiable Instruments Act.

3. It appears that one A. V. Lima issued a cheque in favour of the complainant towards payment of some legally enforceable debt in a sum of Rs.70,000/-. The cheque was presented for realisation by the complainant to his banker. It is said to have been returned on the ground of insufficiency of funds to the credit of the account of the said A. V. Lima. Thereupon, the complainant is said to have issued a notice as required u/s 138 of the Negotiable Instruments Act on 25-2-1999 to said A.V. Lima and to the petitioners herein. The notice was sent to the said A. V. Lima by registered post with acknowledgment due, and it was returned on 27-2-1999 with a postal endorsement "party expired to the sender". Later, the complainant got it confirmed that the said A.V. Lima was no more. Therefore, the said complaint has been filed against the petitioners for an offence u/s 138 of the Negotiable Instruments Act.

4. The learned Counsel for the petitioners contends that when the person who is alleged to have committed the offence u/s 138 of the Negotiable Instruments Act has died, the criminal liability abates and the question of his wife and daughters (petitioners herein) being criminally liable for the offence u/s 138 of the Negotiable Instruments Act does not arise.

5. The learned Counsel for the respondent No.2 on the other hand contends, as the petitioners were aware of the issue of the cheque by the late A.V. Lima and as the notices were sent to them also and that they failed to send reply to notices they may also be held liable u/s 138 of the Negotiable Instruments Act.

6. It is inconceivable that criminal liability can be fastened to the heirs and the legal representatives of the person who is said to have been guilty of the offence in question. I have no doubt in my mind that the petitioners herein cannot be prosecuted for the offence u/s 138 of the Negotiable Instruments Act for the alleged failure of late A. V. Lima in meeting the liability to pay the amount covered by the cheque which was dishonoured in response to the notice sent by the complainant.

7. Under the circumstances, this is a case where the proceedings in CC No.194 of 1999 on the file of the X Metropolitan Magistrate, Hyderabad deserve to be quashed. The petition is allowed accordingly and the proceedings in CC No.194 of 1999 on the file of the X Metropolitan Magistrate, Hyderabad are quashed. No costs.