

(2006) 09 AP CK 0114

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 3224 of 2005

C. Srinivas Himavant

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 14-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 139
Penal Code, 1860 (IPC) — Section 406, 420, 468

Citation : (2007) 1 ALT(Cri) 249 : (2008) 2 BC 547 : (2007) 5 RCR(Criminal) 635 : (2008) 1 RCR(Criminal) 64

Hon'ble Judges : K.C. Bhanu, J

Bench : Single Bench

Advocate : Srinivas Sivaraju, for the Appellant; Public Prosecutor for Respondent No. 1 and R. Umender Kumar, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Bhanu, J.—This Criminal Petition is filed by the petitioner-accused u/s 482, Cr.P.C., to quash the proceedings in C.C. No. 1012 of 2004 on the file of the IX Additional Chief Metropolitan Magistrate, Hyderabad, which was filed u/s 138 of the Negotiable Instruments Act, 1881.

2. The allegations in the complaint are that in pursuance of Joint Venture Agreement, the complainant paid Rs. 47 lakh to the accused. But the accused committed breach of promise and, hence, the complainant lodged a complaint. In pursuance of the compromise, the accused is said to have issued a cheque for Rs. 5 lakh on 12.1.2004. When it was presented, the same was returned with an endorsement funds insufficient. After giving statutory legal notice, complaint is filed.

3. Learned Counsel for the petitioner contended that the de facto complainant lodged a report on 6.1.2004 in FIR No. 12 of 2004 under Sections 420, 406 and 468, IPC and in pursuance of that, the petitioner was taken into custody illegally

on 6.1.2004, that the cheque was taken in coercive manner by the de facto complainant with the influence of police and in those circumstances, there is no legally enforceable debt or liability, that certain amounts were paid after 12.1.2004, that the receipts which have been issued by the police would clearly indicate that cheque has been obtained by the de facto complainant with the help of police force and hence he prays to quash the same. u/s 138 of N.I. Act when a cheque drawn by a person is returned for insufficiency of funds or for any other reason, the complainant is entitled to give a notice u/s 138(b) of the Act calling upon the accused to pay the amount within a period of one month (?) from the date of receipt of notice. If the accused does not pay that amount within the period as mentioned u/s 138(b) of the Act, then cause of action arises for the complainant to file a complaint. Once issuance of cheque is admitted, presumption u/s 139 of the Act can be drawn. If it is drawn, it can be presumed that the cheque was issued for legally enforceable debt.

4. Learned Counsel for the petitioner contended that on 23.1.2004 an amount of Rs. 1 lakh was paid and on 14.1.2004 demand draft of Rs. 2 lakh has been issued to the police on behalf of the complainant. If that is the case, the payment should be given credit to that amount and, therefore, it is not a valid statutory notice as required u/s 138(b) of the Act.

5. The contention that the cheque was obtained by the de facto complainant with the help of police by using coercive method is a question of fact and that aspect cannot be decided and determined exercising powers u/s 482, Cr.P.C. Since the petitioner admitted about the issuance of cheque, the presumption is that it was given for legally enforceable debt or liability. Even according to the learned Counsel for the petitioner, an amount of Rs. 3 lakh was paid to the police, but not to the de facto complainant.

6. Police received the amount and demand draft on behalf of the complainant. Again it is a matter to be enquired and decided by the complainant basing on those documents and finding cannot be given by this Court exercising powers u/s 482, Cr.P.C. Hence, absolutely there are no grounds to quash the proceedings.

Accordingly, the Criminal Petition is dismissed.