(2002) 06 AP CK 0127

In the Andhra Pradesh High Court

Case No : Criminal petition No. 1141 of 2000

Cheruku Enterprises APPELLANT

Vs

State Bank of Hyderabad and Another RESPONDENT

Date of Decision : 26-06-2002

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2002) 2 ALT(Cri) 388 : (2003) 3 BC 581 : (2003) 116 CompCas 58 : (2003) 2 RCR(Criminal) 184

Hon'ble Judges : S.R.K. Prasad, J

Bench : Single Bench

Advocate : Abhinand K. Shavili, for the Appellant; A.V.S.S. Prasad and Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Ch. S.R.K. Prasad, J.—The petitioner invokes the inherent powers of this court u/s 482 of the Criminal Procedure Code, 1973, for quashing of the proceedings in C. C. No. 333 of 1999 on the file of the Fifth Metropolitan Magistrate, Nampalle, Hyderabad.

2. It is necessary to have a brief resume of the background of the facts of the case to appreciate the contentions canvassed. The petitioner deals with the sale of computers and is the distributor for the Andhra Pradesh region for Leo Computers, Sanchayani, Madras, the all India distributor for Leo Computers. The head office of Leo Computers is at Taipei, Taiwan. The petitioner is the sole distributor for entire Andhra Pradesh. The petitioner in turn has appointed a few dealers in the Andhra Pradesh region for supply of computers and always insists on advanced post-dated cheques to supply computers to the dealers. The petitioner has opened cash credit account No. 50584 during September, 1998, with the State Bank of Hyderabad, Sanjivareddi Nagar branch and since then it has been doing all transactions of the petitioner with the said first respondent. A loan of five lakhs rupees has been sanctioned for running the business. The

petitioner has furnished Rs. 92 lakhs worth properties as security to the bank. While the matters stood thus, one of the dealers of the petitioner at Vijayawada, by name Someswar Rao had placed order for supply of 12 computers systems with the petitioner. The petitioner has collected post-dated cheque bearing No. 337416 dated October 23, 1998, for a sum of six lakh rupees from the dealer. It was drawn on Punjab and Sindh Bank, Vijayawada, for a sum of Rs. 6 lakhs by Someswar Rao, After collecting the cheque from the dealer, 12 computers systems were supplied. In order to pay to Sanchayani Leo Computers, Madras, the petitioner has approached the bank for discounting the cheque. The petitioner has to pay the same to the said Sanchayani Leo Computers, Madras. On the strength of the field officer''s report the branch manager was pleased to credit the cheque in favour of the petitioner and the petitioner has discounted the cheque and paid money to Sanchayani for supply of 12 computers. The dealer at Vijayawada cancelled the order for purchase of 12 computers by which time the petitioner already purchased 12 computers systems by paying cash. Immediately it approached Sanchayani Leo Computers, Madras, to take back the systems and pay back the amount collected. Hence the Sanchayani Leo Computes, Madras, collected the computers from the petitioner but they did not return the money collected from the petitioner and later they cancelled the distributorship of its computers. The respondent-bank deposited the cheque bearing No. 334717 dated October 23, 1998, for clearance issued by Sqmeswar Rao the dealer of the petitioner drawn in favour of the petitioner and the cheque was returned unpaid stating the reason as insufficient funds. The respondent-bank immediately informed the petitioner regarding the dishonour of the cheque. It is represented by the petitioner to the bank about the cancellation of orders placed by its dealer Someswar Rao and by that time the bank has paid the discounted amount to Sanchayani Leo Computers, Madras, and he has sought time for settling the transaction. The petitioner requested the bank to clear the amounts towards the discounted cheque as securities of the petitioner worth nearly Rs. 92 lakhs are lying with the bank. Thereupon the first respondent-bank issued notice on March 12, 1999, calling upon the petitioner to pay the cheque amount immediately. A detailed reply was given on April 10, 1999, and the petitioner has subsequently paid an amount of Rs. 50,000 on July 20, 1999, and another sum of Rs. 50,000 on September 29, 1999, towards the discounted cheque. The bank has filed criminal complaint in C. C. No. 333 of 1999 before the Fifth Metropolitan Magistrate, Hyderabad, invoking the provisions of Section 138 of the Negotiable Instruments Act. Aggrieved by the same, the petitioner has presented this criminal petition.

3. Learned counsel for the petitioner contends that the bank has no right to present a complaint against him u/s 138 of the Negotiable Instruments Act. It is also further contended that the G. P. A. holder has no right to present a complaint and hence the complaint is not maintainable.

4. Learned counsel for the first respondent has contended that the bank is entitled to present a complaint u/s 138 as it is a holder in due course. It is also

contended by the respondent''s counsel that it is a case of dishonouring of the cheque and the bank is entitled to proceed against the petitioner. The learned public prosecutor has contended that it is not a fit case where inherent powers can be exercised to quash the proceedings.

5. Adverting to the said contentions counsel for the petitioner has relied on a decision reported in Shridi Sai Steel Balu Complex, Gajuwaka, Visakhapatnam v. State of Andhra Pradesh [2002] 1 ALD 630 (AP) to the effect that holder in due course of negotiable instrument cannot maintain a complaint u/s 138 of the Negotiable Instruments Act. My attention is drawn by the respondent''s counsel to the decision reported in S.P. Sampathy v. Smt. Manju Gupta [2002] 111 Comp Cas 492 ; Union of India and Others Vs. Vijayalakshmi Enterprises and Another, whereunder the Division Bench of this court has categorically stated that the complaint can be filed for the offence u/s 138 of the Negotiable Instruments Act either by payee or the holder in due course. In view of the Division Bench decision in S.P. Sampathy''s case [2002] 111 Comp Cas 492 ; [2002] 1 ALD (Crl.) 619 (AP) enunciating the law u/s 138 of the Negotiable Instruments Act it must be taken that the decision rendered in Shridi Sai Steel Balu Complex''s case [2002] 1 ALD (Crl.) 630 (AP) is no longer good law. It is clear from the decision of the Supreme Court reported in 2001 (3) ACR 2774 (SC) that the complaint by a holder for dishonour of a pay order is maintainable. It is clearly stated u/s 138 that payee or holder in due course can always make a demand for payment of the said amount for which the cheque has been issued by giving notice in writing. It is the payee or the holder in due course that are entitled to present the complaint u/s 142 of the Negotiable Instruments Act. It is clearly stated in Section 142 of the Negotiable Instruments Act that the holder in due course is also entitled to present a complaint. In view of the provisions of Section 138 and in view of the principles enunciated by the Supreme Court as well as the principles laid down by the Division Bench of this court it must be taken that the decision rendered in Credential Finance Ltd. v. State of Maharashtra [2000] 2 ALD 827 (Bom) is not good law. The complaint is certainly maintainable by holder in due course when the cheque was drawn and presented to the bank who paid the amount after purchasing the cheque.

6. It has to be considered whether the bank can proceed against a person who presented the cheque into the bank. A close scrutiny of Section 138 makes it clear that the drawer of the cheque is always liable for payment of the amount for dishonour of cheque but strangely he is shown as witness in this complaint instead of showing him as an accused. Section 138 does not empower to proceed against any person who has not drawn the cheque and only in the case of companies it is permitted to proceed against the partners subject to certain conditions, namely, they are responsible for conducting of business of the company and when there is connivance and consent and negligence is attributed to them. There is no such averment found in the complaint. The bank''s right is only to proceed against the drawer of the cheque u/s 138 and it has no right to proceed against the third parties. The bank has to work out its remedies in civil

court and cannot invoke the provisions of Section 138 of the Negotiable Instruments Act against persons who have not drawn the cheque and only presented cheque to the bank for collection. As the petitioner is not the drawer of the cheque, the holder in due course has no right to proceed against the petitioner. In that view of the matter, the complaint is not maintainable and is liable to be quashed.

7. In the result the petition is allowed and the complaint filed against the petitioner in C. C. No. 333 of 1999 on the file of the Fifth Metropolitan Magistrate, Nampalle, Hyderabad, is quashed.

