
(1998) 09 AP CK 0094

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 3643 of 1998

G. Venkataramanaiah

APPELLANT

Vs

Sillakollu Venkateswarlu and Another

RESPONDENT

Date of Decision : 25-09-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 142
Penal Code, 1860 (IPC) — Section 420

Citation : (1998) 2 ALD(Cri) 689 : (1999) 2 ALT(Cri) 50 : (1998) 3 APLJ 455 :
(1999) 1 CivCC 674 : (1999) CriLJ 1219 : (1999) 2 RCR(Criminal) 211

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : Unnam Muralidhar Rao, for the Appellant; Public Prosecutor (for No. 2), for the Respondent

Final Decision : Dismissed

Judgement

Bilal Nazki, J.—A complaint u/s 138 of Negotiable Instruments Act r/w Section 420 IPC is pending against the petitioner before the learned Additional District Munsif Magistrate, Kandukur. The complaint is sought to be quashed on various grounds, some of them refer to the factual aspects of the matter which this Court will not entertain under the provisions of Section 482, Cr.P.C. However, two legal grounds have been taken which will be considered by this Court presently.

2. One of the grounds taken is that the complaint has been filed beyond time. I have gone through the complaint. The cheque was allegedly issued on 6th March, 1998, it was presented to the banker within six months and it was returned on 9-3-1998 with the endorsement that the accused had closed his account as early as on 4-9-1997. Notice was issued to the accused on 26th March, 1998 for making the payment. Payment was not made and the complaint was made on 8th May, 1998. Since the notice was given on 26th March, 1998 the cause of action would accrue to the complainant on expiry of 15 days" clear notice,

because within 15 days the accused could make the payment. That would mean the complainant had to wait for taking further action till 10th April, 1998. From 11th April, 1998 onwards he could file the complaint and in terms of Section 142(b) of N.I. Act complaint has to be made within one month of the date on which the cause of action arises under Clause (c). In this case, the cause of action arose on 11th April, 1998. The complaint has been filed on 8th May, 1998. Therefore, the complaint is filed within time and no interference is needed on this ground.

3. Second aspect of the matter is more important. It has been suggested that the cheque was not returned by the banker on account of insufficiency of funds but was returned on account of closure of the account. Since Section 138 of N.I. Act does not contemplate a situation where cheque is returned on account of closure of the account, no offence would be attributable to the accused as the cheque had not been returned for insufficiency of funds.

4. The learned counsel for the petitioner has relied on a judgment of Bombay High Court. The Bombay High Court in *Om Parkash v. Smt. Swati Girish Bhide* (1992) 3 Cri 306 (2) considered this question which is being considered by this Court presently. The High Court found;

9. The plain reading of Section 138 of the Negotiable Instruments Act makes it clear that the words - "either because of the amount standing to the credit of that account is insufficient or that it exceeds the amount have been specifically used. It would, therefore, mean that only two contingencies are contemplated and as such, the words-". .either. . or" have been used. It is, therefore, clear that the cheque should be dishonoured either for the insufficiency of the amount or, because it exceeds the amount arranged to be paid from that account. No third contingency or eventuality has been contemplated and the specific clear wording of Section 138 eliminates any third contingency than mentioned in the section itself. It need not be stated that the cheque can be dishonoured for so many reasons and there may be so many eventualities in which the payee is denied payment by the bank. For example, mentioning the date incorrectly or some corrections not initialled or the differences in between the amount mentioned in figures and words are certain other contingencies in which the cheque will be definitely dishonoured and would be returned as unpaid. It is not in respect of any of these contingencies that the dishonour of a cheque has been made penal u/s 138 of the said Act. The submissions on behalf of the petitioners to the effect that the dishonour as in the present case because of the closure of the account should also be held as penal, cannot, therefore, be accepted.

Similarly, the Karnataka High Court in a judgment reported in *G.F. Hunasikathimath v. State of Karnataka* (1991) 1 Cri 226 has taken the same view.

5. I have given anxious consideration to the question of law which is envisaged before me. Before one comes to a definite conclusion as regards interpretation to Section 138 of N.I. Act one has to bear in mind what was the intention of

Parliament when Section 138 was incorporated in the Negotiable Instruments Act. The object of enacting this Section 138 was given in the preamble itself which states:

...inserted with a view to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of funds in the accounts or for the reason that it exceeds the arrangements made by the drawer....

6. The objective itself makes it clear that the intention of the Parliament was that, honest drawer should not suffer at the mechanisation of dishonest drawee. Therefore, intention of the person issuing the cheque becomes pertinent; The Bombay High Court in the case (1992 (3) Cri 306 (2)(supra) has given various instances whereby a cheque can be bounced. One of the instances given is that, if a cheque is bounced on the ground that the signature does not tally with the specimen signature, that cannot be a case of dishonest intention of the person who issued the cheque, correct signature can be put on being asked and the cheque can be encashed. In my view two situations which are envisaged by Section 138 before cognizance is taken by a Criminal Court encompass a situation like the present one. The offence is committed when a cheque is returned for insufficiency of funds. In my view, once an account is closed after a cheque is given of account is closed before the cheque is given, one can safely say that, although it has been returned on account of closure of account but it would in effect mean insufficiency of funds in the account of the person who gave the cheque. As far as in a case where signature does not tally it is not returned at all on account of insufficiency of funds whereas decidedly a cheque which is returned on account of closure of account practically means that there are no funds to the credit of the person who issued the cheque with the Bank: It is the interpretation placed by the Bombay High Court and Karnataka High Court is accepted that will render whole legislation useless. A dishonest person after issuing a cheque or even before issuing a cheque can at any time at his own will close the account and in such a situation Section 138 shall become in effect inoperative and it has not been the intention of the Parliament to make this provision of N.I. Act inoperative. Therefore, I most respectfully disagree with the judgments of the Karnataka High Court and Bombay High Court and hold that, an offence in terms of Section 138 of the Negotiable Instruments Act is committed even if the cheque is returned on the ground of closure of account. ,

7. For the above reasons this petition is dismissed.