courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 31/08/2026

(1997) 06 AP CK 0022

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 5896 of 1996

Gattamaneni Prameela and Others APPELLANT

Vs

Avula Hymavathi and Another RESPONDENT

Date of Decision : 16-06-1997

Acts Referred:
Penal Code, 1860 (IPC) — Section 120B, 406, 420, 468

Citation : (1997) 2 ALD(Cri) 1 : (1997) 2 ALT(Cri) 210 : (1997) 3 APLJ 81 : (1997) 2 APLJ 490

Hon'ble Judges : A. Hanumanthu, J

Bench : Single Bench

Advocate : P. Prabhakar Rao, for the Appellant; T. Subrahmanyam and Public Prosecutor, for the Respondent

Judgement

1. By this petition u/s 482, Cr.P.C., the petitioners who are accused Nos. 3, 4 and 5 respectively in C.C. No. 442/96 on the file of the III Metropolitan Magistrate, Viajayawada in Krishna District are challenging the proceedings initiated against them in that case by the 1st respondent herein.

2. A copy of the complaint-petition in C.C. No. 442/96 is filed along with this petition. As seen from the averments of this complaint-petition, the allegations against these petitioners are as follows :

The 1st accused M/s. Padmalaya Finance Corporation is a partnership firm and carrying on finance business. The 2nd accused Aluvelu Mangamma is its Managing Partner. Accused 3, 4 and 5 (petitioner herein) are its partners, 6th accused is its Manager and 7th accused is the husband of the 2nd accused. The 1st respondent-complainant deposited a sum of Rs. 15,000/- on 17-1-1986 and Rs. 15,500/- on 12-1-1987 with the 1st accused and the 1st accused agreed to pay on the said amounts interest at 12% per annum on demand, every year and it has been doing so every year. The last statement of accounts for the period from 1-4-1993 to 31-3-1994 was signed by the 6th accused as the Manager of the 1st accused firm acknowledging an amount of Rs. 56,850/- due to the complainant as on 31-3-1994. In spite of repeated demands, the 1st accused firm failed to settle the accounts. While matters stood thus, the complainant received a notice of Insolvency petition No. 38/95 from the Court of II Addl. Subordinate Judge at Vijayawada. From the said notice, the complainant came to know that M/s. Krishna Enterprises of which accused 6 and 7 are partners and accused No. 7 is the Managing partner, filed the Insolvency petition 38/95 and the complainant was shown as respondent No. 75 in the said petition, and that M/s. Krishna Enterprises is indebted to the complainant in a sum of Rs. 56,850/-.

The complainant does not know anything about M/s. Krishna Enterprises and he never deposited any amount in Krishna Enterprises. The complainant has to get that amount from the 1st accused and also from its partners A-2 to A-5. The accused might have conspired and transferred the complainant''s account from the account of the 1st accused-firm to the account of M/s. Krishna Enterprises without the knowledge or consent of the complainant by forging the documents with an intention to defraud and cheat the complainant to have a wrongful gain for themselves. The 2nd accused issued a reply to the notice issued on behalf of the complainant alleged falsely that the 1st accused firm, during 1994, decided to close down the business due to heavy loss and therefore, with the consent of all the creditors, the amounts due to them were transferred to M/s. Krishna Enterprises on account of the business arrangements. The complainant never gave consent for the alleged transfer of account from A-1 to M/s. Krishna Enterprises. Therefore, the complainant alleged, that all the accused are liable for punishment for the offences under Sections 120B, 420, 406 and 468 of Indian Penal Code. Challenging the said complaint, the accused 3, 4 and 5 have come up with this petition.

3. The learned counsel for the petitioners raised the following contentions :

(1) The complaint is not maintainable both on facts and law - that the petitioners have ceased to be the partners of the A-1 firm with effect from 22-10-1988 and that fact has been informed to the Registrar of Firms and incorporated in the Register of the firms and that a new partnership was entered into between accused Nos. 2 and 2 others after these petitioners ceased to be the partners on 22-10-1988. Even if the petitioners have been continuing as partners in A-1''s firm, they cannot be prosecuted as they were not incharge of the business of the firm on the date of the alleged offence.

(2) The complaint is silent with regard to the overt acts attributed to these petitioners in the commission of the offences.

(3) The averments in the complaint, even admitted to be true, make out a civil liability but not criminal liability and as such, criminal complaint is not maintainable.

(4) The averments in the complaint are vague and the complainant has not given the details of the documents which were said to have been forged and fabricated and which of the accused did the same, and that the proceedings are sheer

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/gattamaneni-prameela-and-others-…

abuse of process of Court.

4. The learned counsel for the 1st respondent-complainant vehemently contends that the 1st accused-firm transferred the account of the complainant to M/s. Krishna Enterprises without the consent of the complainant and as such, it has committed fraud, also fabricated the documents for the said transfer. He further contends that the petitioners, even if they are retired from the partnership firm, they are liable for the acts of the partnership firm as they happened to be the partners on the date when the complainant deposited the amounts with the firm. The learned counsel further submits that the petitioners have been praying to quash the proceedings against all the accused and as such, it is not maintainable. The learned Public Prosecutor simply submitted that there is no abuse of process of the Court and as such, the present application is not maintainable.

5. The point for consideration is whether there are justifiable grounds to quash the proceedings in C.C. No. 442/94, initiated against these petitioners.

6. It is not disputed that the petitioners herein who are A-3. A-4 and A-5 in the criminal case constituted partners of the 1st accused firm originally. It is also not disputed that they continued to be partners of the 1st accused firm on the date when the complainant deposited her amounts with A-1-firm. The learned counsel for the petitioners submits that these petitioners have ceased to be the partners with effect from 22-10-1988 and thereafter A-2 with 2 others constituted A-1 firm with effect from 22-10-1988, and as such, these petitioners are not liable for the acts of A-1-firm or A-2 and no criminal liability can be attributed to them. The learned counsel for the petitioners also filed a xerox copy of Form-A of Registrar of Firms relating to A-1-firm. On a perusal of these documents, it is clear that the three petitioners herein have ceased to be the partners of A-1-firm with effect from 22-10-1988 and 2 others were inducted as partners on the same date i.e. 22-10-1988. The learned counsel for the petitioners also produced xerox copy of the partnership deed, dated 22-10-1988 entered between A-2 and 2 others under the name and style of A-1-firm. On a consideration of these two documents, it can safely be held that these petitioners have ceased to be the partners of A-1-firm with effect from 22-10-1088. Therefore, they are not the partners of A-1 firm on the date 11-12-1995 when the alleged offences were said to have been committed by A-1 firm. Further, as regards the legal liability of the partners, it is true that under the Indian Partnership Act, "firm" or "partnership" is not a legal entity, but merely an association of persons agreed to carry on business. It is only a collective name for individuals carrying on business in partnership. The essential characteristic of a firm is, that each partner is a representative of other partner. Each of the partners is an agent as well as principal. He is an agent insofar as he can bind the other partners by his acts within the scope of the partnership agreement. He is principal to the extent that he is bound by the acts of other partners. In fact, every partner is liable for an "act of the firm". "Act of a firm" has been defined to mean "any act or omission

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/gattamaneni-prameela-and-others-…

by all the partners or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm." This is the civil liability of the firm and its partners. But, in the instant case, we are concerned with criminal liability under penal provisions and not civil liability of the partners. There is no vicarious liability in criminal law unless the statute takes that also within its fold. There is nothing in the Partnership Act making all the partners of a firm liable for the criminal offences whether they do business or not. At best, the partners who are incharge of the business of the firm when the alleged offence was committed, may be liable for that offence and not the other partners who are no way connected with the business of the firm.

7. I have been fortified in my view by the observations of the Apex Court in Sham Sunder and Others Vs. State of Haryana, whereunder, it is observed in para 9 thus :

"More often it is common that some of the partners of the firm may not even be knowing of what is going on day-to-day in the firm. They may be partners, better known as sleeping partners, who are not required to take part in the business of the firm. There may be ladies and minors who were admitted for the benefits of the partnership. They may not know anything about the business of the firm. It would be a travesty of justice to prosecute all partners."

8. In the instant case, there is no averment in the complaint-petition that these petitioners who are ladies, were incharge of the day-to-day business transactions of A-1 firm. No overt acts have been attributed to these petitioners. More over, as earlier stated, they ceased to be partners of A-1 firm by the date of the alleged offences. Further, the details of the document which were said to have been fabricated or forged are also not mentioned in the complaint. Further, the averments in the complaint make out a civil liability. The criminal proceedings initiated against the partners, in my opinion, definitely amount to abuse of process of the Court as the allegations found in the complaint do not constitute any offence against these petitioners. As such, the criminal proceedings are liable to be quashed.

9. For the reasons stated above, the petition is allowed. The proceedings in C.C. No. 442/96 on the file of the III Metropolitan Magistrate, Vijayawada as against the petitioners herein are quashed.

10. Petition allowed.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/gattamaneni-prameela-and-others-…