
(2010) 03 AP CK 0086

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 6636 of 2007

Haritha Raksha Enterprises and Others

APPELLANT

Vs

Northern Minerals Ltd. and Another

RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 5, 6

Citation : (2010) 1 ALD(Cri) 749 : (2010) 3 BC 244

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Ramakrishna, for the Appellant; Akshat Sanghi and Addl. Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—Heard Mr. Ramakrishna, the learned Counsel representing the petitioners/accused, Mr. Akshat Sanghi, Counsel representing 1st respondent and the learned Additional Public Prosecutor representing 2nd respondent.

2. Mr. Ramakrishna, the learned Counsel representing the petitioner would maintain that when the cheque number was wrongly mentioned inasmuch as there was no valid notice u/s 138 of Negotiable Instruments Act, the very complaint is not maintainable and hence the proceedings are liable to be quashed.

3. The learned Additional Public Prosecutor however would maintain that the two grounds which had been raised—the wrong number relating to the cheque in the notice and also to the effect that the blank cheque was issued by way of security, these being factual controversies, normally on such grounds, the Criminal Petition u/s 482, Criminal Procedure Code (in short hereinafter referred to as "Code" for the purpose of convenience) cannot be allowed.

4. Mr. Akshat Sanghi representing Sri Sharad Sanghi had placed strong reliance

on Kavuri Suvarna Bala Sundaram Vs. Karnati Poorna Chandra Rao and Another, and would maintain that in the light of the said decision, this aspect also may have to be gone into at the appropriate stage.

5. It is the case of the petitioners/accused that C.C. No. 436/2006 on the file of 1st Additional Metropolitan Magistrate, City Criminal Courts at Hyderabad filed by the 1st respondent/complainant is liable to be quashed as there is no statutory notice issued by the 1st respondent u/s 138 of Negotiable Instruments Act to the petitioners for maintaining the complainant. In the absence of statutory notice, the C.C. No. 463/2006 on the file of 1st Additional Metropolitan Magistrate, City Criminal Courts, Hyderabad to be quashed.

6. Further it is stated that the notice u/s 138 of the Negotiable Instruments Act issued in respect of Cheque No. 536537 dated 3.3.2004 drawn on State Bank of Hyderabad, Huzurnagar Branch, Nalgonda for Rs. 16,00,000/- but the complaint was filed basing on cheque bearing No. 586537 dated 3.3.2004 drawn on State Bank of Hyderabad, Huzurnagar Branch, Nalgonda for Rs. 16,00,000/- and therefore the complaint is not maintainable and the same is liable to be quashed. The proceedings in C.C. No. 463/2006 aforesaid are sheer abuse of process of Court and the same are liable to be quashed.

7. It is further stated that the petitioners 2 to 4 in the petition had already retired from the partnership firm and they are no longer partners of the 1st petitioner. Even assuming without conceding that the petitioners 2 to 4 are still partners, there is no averment in the complaint that at the time of commission of the offence by the firm, the petitioners 2 to 4 are responsible to the firm for the conduct of business of the firm. In the absence of any such averment, the complaint is liable to be quashed. Further it is stated that the cheque No. 536537 was a blank cheque issued as security to the 1st respondent during the year 1989-90 and the same was filled up by the 1st respondent with a mala fide intention by putting the date and amount and presented the same during the year 2004. There is material alteration in respect of the cheque and further the cheque was filled up without the consent of the 2nd petitioner and presented without any authority for realization. The complaint is liable to be quashed as there is no legally enforceable debt.

8. The aspect of retirement and the aspect of the blank cheque being issued as security, these are factual issues which cannot be gone into at this stage.

9. The only question which may have to be considered is whether this mistake specified in the notice relating to the cheque number would totally vitiate of proceedings and whether such proceedings are liable to be quashed u/s 482 of the Code. The learned Counsel representing the 1st respondent/complainant placed strong reliance on the decision referred supra wherein the learned Judge of this Court observed at para 5 as hereunder:

In my considered opinion, the number on the cheque has no relevance in a proceeding u/s 138 of the Act. Section 6 of the Act defines "cheque" as "a bill of

exchange drawn on specified banker and not expressed to be payable otherwise than on demand", "bill of exchange" is defined in Section 5 of the Act as "an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument" neither Section 5 nor 6 of the Act state that the cheque or bill of exchange, to be valid, should bear a number. The contention of the learned Counsel for the petitioner is that all the cheques issued by all the banks will have numbers and if a cheque issued by arty bank does not bear a number the bank would not honour it. The question whether banks would honour without numbers or nor, is not the point for decision. The point for decision is whether cheque number should he mentioned in the statutory notice of dishonour and demand for payment, issued prior to institution a complaint u/s 138 of the Act, and if mentioning of a wrong number of the cheque vitiates the prosecution. It should be kept in view that a section has to, and can be interpreted in one way only. Two different interpretations cannot be given depending on who wants to take advantage of the wording used in the section. If the section has to be constructed strictly, depending on the words used therein, it has to be done so whether it is the prosecution or the accused that would have the advantage of the words used in the section. So no words can either be added or deleted while interpreting the sections. There is nothing in Section 138 of the Act to show that the number of the dishonoured cheque also should be mentioned either in the statutory notice, or in the complaint.

10. In the light of the view expressed in the aforesaid decision, this Court is of the considered opinion that this is not a fit matter to be interfered u/s 482 of the Code. Liberty is given to the petitioners to urge all these grounds at the appropriate stage. Accordingly, the Criminal Petition shall stand dismissed.

Cr. Petn. dismissed.