

(1991) 06 AP CK 0003

In the Andhra Pradesh High Court

Case No : Criminal P. No. 389 of 1991 and Cri. M.P. No's. 505, 1066 and 1067 of 1991

Jagarlamudi Surya Prasad and Others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 11-06-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 142
Penal Code, 1860 (IPC) — Section 420

Citation : (1991) 2 ALT 457 : (1991) 2 APLJ 155 : (1991) CivCC 680 : (1993) 76 CompCas 339 : (1992) CriLJ 597 : (1992) 3 RCR(Criminal) 146

Hon'ble Judges : D.J. Jagannadha Raju, J

Bench : Single Bench

Advocate : K. Harinath and Tamada Gopalakrishna, for the Appellant; Addl. Public Prosecutor, for the Respondent

Judgement

1. Criminal Petition No. 389 of 1991 is a petition under S. 482, Cri.P.C. to quash the proceedings in C.C. No. 424 of 1989 on the file of the II Additional J.F.C.M., Kakinada, Criminal M.P. No. 1066/91 is an application by the de facto-complainant who originally gave a complaint to the Magistrate regarding the offences for which charge-sheet was filed in C.C. No. 424/89, Criminal M.P. No. 505/91 is an application for stay of further proceedings in C.C. No. 424/89 pending Cri.P. No. 389/91. That petition was ordered and stay of further proceedings was granted on 11-3-91. To vacate the stay granted Cri.M.P. No. 1067/91 is filed.

2. The three accused in C.C. No. 424/89 have come up with this application to quash the proceedings in C.C. No. 424/89. Sri K. Harinath, the learned counsel appearing for the petitioners, contends that the cheque, regarding dishonour of which the case has come up, is not a cheque issued on behalf of the company or P-1 in his capacity as Managing Director of the company. It is claimed that the cheque is a forged cheque. In the alternative it is claimed that as the cheque is a

cheque issued by the petitioner No. 1 against his own personal account, when the liability to pay the amount is that of the company, no offence under S. 227 of the Negotiable Instruments Act is made out against the accused persons. He further contends that the ingredients of S. 227 are not satisfied. The chargesheet does not allege that the cheque was issued on behalf of the complainant. There is no proof of notices alleged to have been issued being received by the petitioners. He claims that the ingredients of S. 227 of the Negotiable Instruments Act as well as the ingredients of the offence under S. 420, I.P.C. are not satisfied and hence the prosecution should be quashed. He also contends that Cri.M.P. No. 1066 of 1991 is not maintainable. As the charge-sheet was filed in this case, the de facto-complainant can at best only seek a right to assist the Public Prosecutor and he cannot claim a right to be impleaded as a party. There is no provision in the Cri.P.C. for impleading the de facto-complainant as a party.

3. On behalf of the de facto-complainant who is the petitioner in Cri.M.P. Nos. 1066 of 1991 and 1067/91, Mr. T. Gopala Krishna, contends that he is fully alive to the limitation prescribed under S. 301, Cr.P.C. He claims that according to S. 227 and S. 142 of the Negotiable Instrument Act, there is no provisions for referring a complaint filed by the payee of the cheque to the police for purposes of investigation and it is a bounden duty of the Magistrate to take cognizance of the complaint if the complaint satisfies the requirements of S. 227 and Ss. 141 and 142 of the Negotiable Instruments Act. In such circumstances, the de facto-complainant is the person who is certainly entitled to prosecute the case. Even otherwise, the de facto-complainant does have the right to assist the prosecution and he has also the right to submit written arguments after the evidence is closed in a case. Hence in this particular proceedings, the papers filed by him in Cri.M.P. No. 1066 of 1991 may be treated as the written arguments to supplement the arguments of the Public Prosecutor. Subject to the objections of the petitioners advocate, he argued both on merits and on legality. He contends that all questions regarding the cheque being forged, the cheque being issued on the personal account of the petitioner No. 1 and not on the account of the company and the factum of issuing of notices and refusal of the notices are all questions of fact which can only be decided after evidence is recorded. In a proceedings under S. 482, Cr.P.C. it is not open to this Court to go into the questions of fact. The complaint has been given in a very elaborate manner by the complainant. Without jurisdiction and without any legal necessity, the Magistrate referred the matter to the police for purposes of investigation treating it as an ordinary private complaint. The mere fact that while drafting the charge-sheet the police authorities have omitted certain details does not take away the rights which are available to the de facto complainant in this proceedings. He contends that in this case, the cheque was issued on 14-6-1989 for an amount of Rs. 2,85,700/-. It was dishonoured on 16-6-1989. On 19-6-1989, the complainant gave notices by registered post as well as under certificate of posting. The notices were returned and the petitioners evaded receiving the notices. That is sufficient compliance with clause (c) of proviso to S. 227 of the

Negotiable Instruments Act. The general presumption that a person who refused to receive a notice or returns a notice is deemed to be served with that notice would apply in this case also. The complaint itself was filed in the Court on 7-7-1989 i.e. within the period of one month from the date on which the cause of action arose under clause (c) of the proviso to S. 227 of the Negotiable Instruments Act. The proceedings cannot be quashed on any ground. The questions of fact are all matters which will have to be determined after the evidence is recorded. The present petition Cri.P. No. 389/91 is not maintainable and it is devoid of merits.

4. On behalf of the State, the Public Prosecutor contends that in a proceeding under S. 482, Cr.P.C. it is not open to the Court to go into the question of fact. All the points raised by Mr. Harinath relate to the questions of fact only. After the amendment of the Negotiable Instruments Act and introduction of Ss. 138 - 142 the present prosecution case is perfectly valid. There is absolutely no illegality in taking cognizance of the case. No relief can be granted under S. 482, Cr.P.C.

5. The point for consideration is whether the proceedings in C.C. No. 424 of 1989 are liable to be quashed.

6. It is an admitted fact that the first petitioner, who is one of the Managing Directors of the company issued the cheque for an amount of Rs. 2,85,700/-. Though in the Cr.P. No. 389/91 it is alleged that the cheque is forged, no basis is given as to how the complainant could forge a cheque, especially on a cheque leaf of a cheque-book of the personal account of the petitioner No. 1. Obviously, this theory of forgery appears to have been introduced only with a view to evade prosecution under the amended law of the Negotiable Instruments Act. It should be remembered that Chapter 17 of the Negotiable Instruments Act has been introduced by Act 66 of 1988 and it came into force with effect from 1-4-1989. For the first time the mere dishonouring of a cheque is made a punishable offence by reason of Ss. 138 - 142 of the Negotiable Instruments Act. A perusal of the record reveals that the cheque was dishonoured on 16-6-1989 when it was presented by the de facto complainant and immediately on 19-6-1989, registered notices were issued through advocate to the three petitioners who claim to be the Managing Directors of the Company. They managed to evade the notices and the normal presumption is that the notices sent under certificate of posting must have been received by them. The copies of the notices are produced along with the Cri.M.P. No. 1066/91. It is crystal clear that repeated efforts were made to serve them and ultimately they were returned on the ground that the party left without instructions and hence they were returned. The registered notices were returned after making efforts for seven days to serve them. The notices sent under certificate of posting must have been received by the present petitioners. The normal presumption is that they were received in due course of time.

7. It is claimed by Mr. Harinath that the company had the liability and there was no liability for the person who issued the cheque namely the petitioner No. 1 to

pay the complainant. As the liability is not that of petitioner No. 1 S. 227 of the Negotiable Instruments Act cannot be invoked. One fails to understand why the petitioner issued the cheque on his personal account when the liability is that of the company. These are all matters which will have to be gone into after the evidence is recorded in the trial. This is not a matter which can be examined at this stage while exercising powers under S. 482, Cr.P.C. If ultimately the Court comes to the conclusion that the cheque is forged as contended by the present petitioner's advocate, then the case would end in acquittal. If it also comes to life that an offence under S. 420, I.P.C. is not made out, they would be acquitted for that offence. As things now stand, the complaint given in this case fully satisfies the ingredients of S. 227 of the Negotiable Instruments Act. The cheque issued towards salary payable by the company by one of the Managing Directors was dishonoured. The complaint complied with all the three conditions laid down in the proviso to S. 227 of the Negotiable Instruments Act. It should also be remembered that under S. 141 of the said Act if the offence is committed by a company, the persons who are in charge of the conduct of the business of the company as well as the company will be liable. The three petitioners, all of whom are the Managing Directors, are certainly liable to be proceeded against. The ingredients of S. 142 of the Act are also fully satisfied as the complaint was made by the payee; and as the complaint was made within one month of the date on which the cause of action arose under clause (c) of the proviso to S. 227 of the Act and the complaint was filed in the Court of the First Class Magistrate, Clause (c) of the proviso to S. 227 of the Act is also satisfied.

8. It is true that there is a line of decisions prior to 1-4-1989 which laid down that a mere dishonouring of a cheque does not amount to committing of offence under S. 420, Cr.P.C. what exactly is the effect of the amendment of the law by the amendment of the Negotiable Instruments Act by reasons of Act 66 of 1988 regarding the offence under S. 420, I.P.C. in cases of dishonouring of cheques is a matter that will have to be considered as and when that specific question arises before this Court. It cannot straightway be said that in this case, no offence under S. 420, I.P.C. is made out.

9. Before parting with this case, I would like to point out that the procedure adopted by the Magistrate by referring the private complaint to the police appears to be unnecessary and irregular. By virtue of the provisions of Chapter 17 of the Negotiable Instruments Act, particularly in view of S. 142 of the Act, when a complaint filed by the payee or the holder in due course of the cheque which was dishonoured, the Magistrate has necessarily to take cognizance if the other ingredients are satisfied. He has no right or power to refer it for investigation to the police just like a private complaint filed in accordance with the provisions of the Criminal Procedure Code.

10. Considering the entire material, I find that there is absolutely no justification for this Court to exercise powers under S. 482, Cr.P.C. In the result Cri. Petition No. 389 of 1991 is dismissed.

11. Cri.M.P. No. 1066 of 1991 is allowed in part and it is treated as a petition for assisting the Public Prosecutor and the papers filed along with the petition are treated as written arguments submitted by the de facto complainant.

12. Criminal M.P. No. 505 of 1991 and Cri.M.P. No. 1067 of 1991 are hereby dismissed as unnecessary.

13. Order accordingly.