
(2006) 08 AP CK 0013

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1944 of 1999

Jayarama Finance and Leasing (P) Ltd.

APPELLANT

Vs

Bobba Nageswara Rao and Another

RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251, 255(1), 357
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2006) 2 ALD(Cri) 733 : (2006) 3 ALT(Cri) 383 : (2007) 3 BC 348

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : N. P Anjana Devi and Satyanarayana, for the Appellant; Yadagiri Reddy (NP) and Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

B. Seshasayana Reddy, J.—This criminal appeal is directed against the judgment dated 24.9.1999 passed in C.C. No. 194 of 1997 on the file of the VI Metropolitan Magistrate for Railways, Visakhapatnam, whereby and whereunder the learned Magistrate found accused B. Nageswara Rao not guilty of the offence u/s 138 of the Negotiable Instruments Act, 1881 (in short, "the Act") and acquitted him accordingly u/s 255(1), Cr.P.C.

2. Background facts of the case leading to filing of this appeal are: The appellant is the complainant whereas the 1st respondent is the accused in C.C. No. 194 of 1997. It is the case of the appellant complainant that the 1st respondent—accused availed a loan of Rs. 30,000/- and executed a promissory note on 9.4.1993 agreeing to repay the same in 12 monthly instalments at the rate of Rs. 2,875/-. The 1st respondent—accused paid Rs. 4,875/- on 18.8.1994 and issued a cheque dated 22.3.1995 for Rs. 23,875/- drawn on the Vysaya Bank Limited, Suryabagh Branch, Visakhapatnam towards the balance amount. On presentation of the said cheque, it came to be dishonoured for want of sufficient funds. Thereupon the appellant-complainant issued statutory notice to the 1st

respondent accused as required u/s 138(b) of the Act. There was no response from the 1st respondent-accused for the said notice. Finally a settlement was arrived and the 1st respondent-accused issued a cheque dated 27.9.1996 for Rs. 55,731/- drawn on the Vysaya Bank Limited, Suryabagh Branch, Visakhapatnam towards the final settlement. The appellant-complainant presented the said cheque on 27.9.1996 and the same came to be dishonoured for insufficient funds. Thereupon, the appellant-complainant issued a statutory notice dated 7.10.1996 as required u/s 138(b) of the Act demanding the 1st respondent-accused to make good the amount covered under the cheque in question. The 1st respondent-accused failed to make good the amount covered by the cheque in question. Therefore, the appellant-complainant presented a complaint before the III Metropolitan Magistrate, Visakhapatnam. The learned Magistrate took the complaint on file as C.C. No. 508 of 1996. Subsequently, the case came to be transferred to the file of the VI Metropolitan Magistrate, Visakhapatnam as per the orders of the Chief Metropolitan Magistrate, Visakhapatnam and renumbered as C.C. No. 194 of 1997.

3. The 1st respondent-accused entered appearance and on examination u/s 251, Cr.P.C, he denied the accusation and pleaded not guilty.

4. To substantiate the accusation levelled against the 1st respondent accused, the appellant-complainant examined one M. Danamjaya Rao as P.W.I and exhibited 9 documents as Exs. P-1 to P-9. On behalf of defence, the 1st respondent accused got himself examined as D.W.I and exhibited 5 documents as Exs. D-1 to D-5.

5. The learned Magistrate, on considering the evidence brought on record and on hearing the Counsel for the parties, came to the conclusion that the complaint was not properly instituted and thereby recorded acquittal of the 1st respondent-accused by judgment dated 24.9.1999. Hence, this criminal appeal by the appellant complainant.

6. The 1st respondent-accused received the notice in this appeal and entered appearance through a Counsel. When the appeal came up for hearing on 30.8.2006 there was no representation on behalf of the 1st respondent-accused. Even on this day also, neither the 1st respondent-accused nor his Counsel appeared. Hence, heard learned Counsel appearing for the appellant complainant and perused the material brought on record.

7. Learned Counsel appearing for the appellant-complainant submits that the appellant-complainant is a company and complaint came to be presented on its behalf by duly authorised person i.e., P.W.1. He would further submit that authorisation was exhibited as Ex. P2, and therefore, the Trial Court was not justified in recording a finding that the complaint was not instituted by an authorised person and thereby acquitted the 1st respondent-accused on that ground.

8. The 1st respondent-accused got himself examined as DW.1. He admits the

issuance of the cheque in question, which has been marked as Ex.P6. He took the plea that the complaint was not instituted by an authorised person. His plea was accepted by the Trial Court based on the judgment of this Court in *Satish & Co. v. S.R. Traders and Ors.* 1997(1) ALT (Cri.) 696 .

9. The proposition of law laid down by this Court in *Satish & Co.* 's case (supra), is no more good in law in view of the decision of the Supreme Court in *M.M.T.C. Ltd. and Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another*, , wherein it has been held that the complaint lodged by the Manager or Deputy General Manager, who had not been authorised by Board of Directors to sign and file complaint on behalf of company cannot be dismissed on the ground that it was not properly instituted, since the same could be rectified at subsequent stage. In a way it has been held that the defect is curable, Paras 11 and 12 of the said judgment need to be noted and they are thus:

11. This Court has as far back as, in the case of *Vishwa Mitter of Vijay Bharat Cigarette Stores, Dalhousie Road, Pathankot Vs. O.P. Poddar and Others*, , held that it is clear that anyone can set the criminal law in motion by filing a complaint of facts constituting an offence before a Magistrate entitled to take cognizance. It has been held that no Court can decline to take cognizance on the sole ground that the complainant was not competent to file the complaint. It has been held that if any special statute prescribes offences and makes any special provision for taking cognizance of such offences under the statute, then the complainant requesting the Magistrate to take cognizance of the offence must satisfy the eligibility criterion prescribed by the statute. In the present case the only eligibility criterion prescribed by Section 142 is that the complaint must be by the payee or the holder in due course. This criterion is satisfied as the complaint is in the name and on behalf of the appellant company.

12. In the case of *Associated Cement Co. Ltd. Vs. Keshvanand*, , it has been held by this Court that the complainant has to be a corporeal person who is capable of making a physical appearance in the Court. It has been held that if a complaint is made in the name of an incorporeal person (like a company or corporation) it is necessary that a natural person represents such juristic person in the Court. It is held that the Court looks upon the natural person to be the complainant for all practical purposes. It is held that when the complainant is a body corporate it is the de jure complainant, and it must necessarily associate a human being as de facto complainant to represent the former in Court proceedings. It has further been held that no Magistrate shall insist that the particular person, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. It has been held that there may be occasions when different persons can represent the company. It has been held that it is open to the de jure complainant company to seek permission of the Court for sending any other person to represent the company in the Court. Thus, even presuming, that initially there was no authority, still the company can, at any stage rectify that defect. At a subsequent stage the

company can send a person who is competent to represent the company. The complaints could thus not have been quashed on this ground.

A Single Judge of this Court in *Eenadu a Daily Newspaper, Vijayawada v. J. Shiva Shankar* 2002(1) ALD (Cri.) 403, placing reliance on the decision cited above, held that the company can at any stage rectify that defect by sending a person who is competent to represent it.

10. Coming to the facts of the case on hand, the complaint is filed by the company represented by P.W. 1. The authorisation issued in his favour has been marked as Ex. P2. Such is the situation, it cannot be said that the complaint was not properly instituted or represented. Another plea taken by the 1st respondent-accused is that he issued the cheque as a security for the loan and that was not issued towards legally enforceable debt. The Trial Court on thorough examination of the evidence brought on record rejected the said contention. Relevant portion of the judgment of the Trial Court needs to be noted and it is thus:

...So the question that has to be seen now is, whether the said cheque Ex. P6 is a valid cheque as envisaged u/s 138 of NI Act. As seen from the trend of the cross-examination of P.W.1 and the evidence of D.W. I, the defence of the accused is that the complainant obtained 8 blank cheques towards security at the time of their lending amount. The accused being D.W.I at the time of his cross-examination clearly admitted that he did not obtain any acknowledgement from the complainant firm to show that he gave them 8 blank cheques. At another stage of his cross-examination D.W.I accused clearly admitted that after the cheque Ex. P6 was dishonoured and returned he received the legal notice got issued by the complainant, and that he did not give any reply in writing thereon. His further evidence is that he personally went and informed the authorities of the complainant firm that he will pay the balance amount within a period of one month and even then he did not pay the balance amount. Further, the accused also not produced any material to show that the complainant obtained the said cheque in Ex. P6 in a blank form from him towards security. That apart the suggestions put to P.W. 1 on the above aspect, which were denied by P.W.1, and. Ultimately remained as suggestions without any proof. Therefore, in view of the admissions made by D.W. 1 -accused it can be said that the defence set up by the accused is only a false story invented by him in order to escape from the criminal liability. Hence, I find that there is no substance in the contention of the learned Counsel for the accused.

The Trial Court appreciated the material brought on record in right perspective and repelled the defence pleaded by the 1st respondent-accused. Therefore, I do not see any valid ground to interfere with the finding of the Trial Court on this aspect.

11. In the result, this criminal appeal is allowed setting aside the judgment of acquittal of the 1st respondent-accused and thereby 1st respondent-accused is found guilty for the offence u/s 138 of the Act and he is convicted of the same.

The cheque in question which has been exhibited as Ex. P6 is dated 27.9.1996. Nearly 10 years have been elapsed. Keeping this aspect in view, I feel that imposition of compensation as provided u/s 357, Cr.P.C. would meet the ends of justice instead of imposing corporeal punishment Accordingly, the 1st respondent-accused is sentenced to pay compensation of Rs. 55,731/- to the appellant-complainant.