
(1999) 04 AP CK 0094

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 2862 of 1997

K. Subramaniam and Others

APPELLANT

Vs

Sri Kamakshi Extractions and Another

RESPONDENT

Date of Decision : 22-04-1999

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 141(1), 141(2)

Citation : (1999) 1 ALD(Cri) 776 : (1999) 1 ALT(Cri) 660 : (1999) 2 CivCC 632 : (1999) 97 CompCas 335 : (1999) CriLJ 4231 : (1999) 3 RCR(Criminal) 253

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : A.T.M. Rangaramanujam, for the Appellant; N. Narasimha Reddy and Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Bilal Nazki, J.—The petitioners are facing trial u/s 138 of the Negotiable Instruments Act, 1881, before the magistrate. Quashing is sought only on the ground that the complaint does not disclose that the petitioners were responsible for the management of the affairs of the company and they were in any way responsible for the financial dealings of the company. It is further stated that no specific averment is made with respect to the present petitioners in the complaint.

2. The petitioners are accused Nos. 3 to 6. It is stated in the complaint that A-3 to A-6 are the directors of the company. It is further stated in the complaint, "towards the dues and in part payment thereof, the second accused on behalf of the first accused with the consent of A-3 to A-6 got issued a cheque bearing No. 12774, dated September 28, 1996, for Rs. 1,25,000 and bearing No. T. No. 12773, dated September 28, 1996, for Rs. 1,25,000". It is submitted that, on the basis of the assertions made in the complaint no offence is made out. With regard to offences by companies, Section 141 of the Negotiable Instruments Act, 1881, lays down that, every person who at the time the offence was committed

was in charge of and was responsible to the company for the conduct of the business of the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against in accordance with the provisions of the Negotiable Instruments Act. Sub-section (2) of Section 141 makes it clear that, if it is proved that the offence had been committed with the consent or connivance of any person, he shall also be liable for punishment u/s 138. Reading Sub-sections (1) and (2) of Section 141 together the following persons can be held guilty of an offence u/s 138 :

(1) The company.

(2) The person who at the time of offence was in charge of and was responsible to the company for the conduct of the business of the company.

(3) Where any offence under the Negotiable Instruments Act had been committed by company and it was proved that the offence had been committed with the consent or connivance of such a person.

(4) Where any neglect constituting the offence is attributable to any director, manager, secretary or other officer of the company.

3. However, there is an exception under the proviso to Section 141(1) where the onus is on such a person to show that the offence was committed without his knowledge.

4. In view of Section 141 it is clear that, if a person is responsible for any of the things done or responsible for committing any of the things mentioned in Section 141(2), he is guilty of an offence under the Negotiable Instruments Act. The complaint in the present case discloses that the cheque was issued with the consent of the present petitioners. It also discloses that they were the directors of the company. Since the cheques which bounced were issued with the consent of the petitioners who had been directors at the relevant point of time, prima facie there is an offence made out u/s 141. It is now well settled that, all the ingredients of an offence need not be stated in the complaint itself. However, learned counsel for the petitioners relied on various judgments of this court and also a judgment of the Supreme Court being *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others*, , in which the Supreme Court held :

"10. It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers u/s 482 of the present Code."

5. But, while going through the complaint, as pointed out earlier, an offence is made out. Besides, I am fortified in my view by the judgment of the Supreme Court in *Rajesh Bajaj Vs. State NCT of Delhi and Others*, in which it has been

held that it is not necessary that a complaint should reproduce verbatim all the ingredients of the offence. The court has laid down that if the factual foundation of the offence has been laid down then the High Court should not hasten to quash the proceedings. Paragraph 9 of the judgment lays down :

"9. It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelt out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during the investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence. In State of Haryana and others Vs. Ch. Bhajan Lal and others, , this court laid down the premise on which the FIR can be quashed in rare cases."

6. For all these reasons, I do not find any merit in this petition which is accordingly dismissed.