(2017) 01 AP CK 0001

In the Andhra Pradesh High Court

Case No : 1558 of 2016

KARUMANCHI SULOCHANA APPELLANT

Vs

STATE OF TELANGANA ,REP ,PP AND ANOTHER RESPONDENT

Date of Decision : 02-01-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 397, Section 401, Section 244, Section 245, Section 156(3) - Calling for records to exe

Citation : (2017) 01 AP CK 0001

Hon'ble Judges : T Sunil Chowdary

Bench : SINGLE BENCH

Advocate : D Raghava Reddy

Final Decision : Allowed

Judgement

1. This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C challenging the order, dated 19.04.2016, passed in C.C.No.727 of 2014 on the file of the Court of the IV Additional Chief Metropolitan Magistrate, Hyderabad whereunder the 2nd respondent herein was discharged of the offence punishable under Section 420 of IPC.

2. The contention of the learned counsel for the petitioner is three fold, viz., 1) the trail Court misconstrued the scope of Sections 244 and 245 of Cr.P.C and discharged the 2nd respondent on assumptions and presumptions, 2) the trail Court having taken cognizance of offence against the second respondent for the offence punishable under Section 420 IPC, ought not to have discharged him suo moto; and 3) the finding of the trail Court that the material placed before it, prima facie, does not disclose the offence, alleged to have been committed by the second respondent, is not sustainable.

3. Per contra, the learned counsel for the second respondent submitted that the petitioner failed to prove the exact date of closing of the bank account by the

second respondent and that itself is sufficient to discharge the second respondent of the alleged offence. He further submitted that the trail Court discharged the second respondent in view of the sections 244 and 245 Cr.P.C. He further submitted that there is no illegality or irregularity in the impugned order warranting interference of this Court under Sections 397 and 401 Cr.P.C. and hence the present Criminal Revision Case is liable to be dismissed. Both parties filed their respective written arguments.

4. To substantiate the argument, the learned counsel for the petitioner has drawn the attention of this Court to the following decisions: Dashrath Rupsingh Rathod vs. State of Maharashtra, 2014 AIR(SC) 3519 wherein the Hon''ble apex Court at para No.18, held as under: 18. We feel compelled to reiterate our empathy with a payee who has been duped or deluded by a swindler into accepting a cheque as consideration for delivery of any of his property; or because of the receipt of a cheque has induced the payee to omit to do anything resulting in some damage to the payee. The relief introduced by Section 138 of the NI Act is in addition to the contemplations in the Indian Penal Code. It is still open to such a payee recipient of a dishonoured cheque to lodge a First Information Report with the Police or file a Complaint directly before the concerned Magistrate. If the payee succeeds in establishing that the inducement for accepting a cheque which subsequently bounced had occurred where he resides or ordinarily transacts business, he will not have to suffer the travails of journeying to the place where the cheque has been dishonoured. All remedies under the Indian Penal Code and Code of Criminal Procedure are available to such a payee if he chooses to pursue this course of action, rather than a Complaint Under Section 138 of the NI Act. And of course, he can always file a suit for recovery wherever the cause of action arises dependent on his choosing. Om Pralasj Agarwal v. Khaja Krishna Prasad,2015 1 ALD(Cri) 68. The principle enunciated in this case is that closure of the bank account gives rise to cause of action for filing of complaint under Section 138 of N.I. Act. Mani v. Joseph,2000 1 ALT(Cri) 28 wherein the Kerala High Court at para No.11, held as under: 11. The evidence adduced by the complainant under Section 244 of the Code need not be appreciated by the Magistrate by applying the standard of test which has to be adopted by the Magistrate at the time of appreciating the evidence for finding out whether the accused is guilty of the offence or not at the final stage of the case. The attempt of the Magistrate at that stage has to be limited to find out whether a prima facie case is made out to proceed against the accused after framing charge. A reading of Section 245 (1) would make it clear that the materials placed by the complainant before Court at the stage of adducing evidence under Section 244 of the Code has to be taken into account by the Magistrate as if those materials stand unrebutted and it is in the above manner that the Magistrate would have to find out whether the evidence adduced by the complainant is sufficient to make out a prima facie case against the accused." Gottipati Subba Naidu v. Talluri Mahalakshmamma,2000 1 ALT(Cri) 187 Madgula Sathavva v. State of A.P. and Deputi Ramadevi v. State of A. P., 2006 3 ALT(Cri) 21 These decisions deal with

scope of Section 202 Cr.P.C. Maruthi College Engineering & Technology v. Mohd. Salahuddin Ghori, 2006 3 ALT(Cri) 96 wherein this Court at para No.7, held thus: " After going through the contents and ingredients of Section 420 IPC, knowing fully well that the prosecution cannot be maintained thirty days after the waiting period form the date of issuing of notice, the accused approached him dishonestly making a request to wait till 4.3.2003 promissing that he would repay the amount. In view of the above circumstances, I find that there is a prima facie case for the offence under Section 420 IPC. Therefore, the prosecution in respect of Section 420 IPC is not liable to be quashed." Thota Papi Reddy vs. Gudalli Yellaiah, 2006 3 ALT(Cri) 219. As per the principle enunciated in this case, the Court has to take into consideration the prima facie case while taking cognizance of the offence. State of Bihar v. Baidnath Prasad @ Baidyanath Shah, 2002 1 ALT(Cri) 170 wherein the Hon''ble apex Court at para No.7, held as under: 7. An order of discharge of the accused after collecting the evidence envisaged in Section 244 of the Code can be passed only when "the magistrate considers, for reasons to be recorded, that no cases against the accused has been made out which, if unrebutted, would warrant his conviction." This is the legislative edict of Section 245 of the Code. The only other exception to the said precept is that it is open to the magistrate to discharge the accused at any previous stage of the case "if for reasons to be recorded by such magistrate, he consider the charge to be groundless." The magistrate had not reasons to discharge the accused at that stage as he felt that there is evidence to frame the charge he could not but dismiss the plea for a discharge. The High Court did not consider the case from the angle provided in Section 245 of the Code. As extracted above, the High Court was persuaded to discharge the accused only on the ground that "the case was pending for the last seven years." Paraman v. Chitra Devi, 2008 2 ALT(Cri) 227. The principle enunciated in this case is that the Court cannot consider the merits of the case at the stage of summoning the accused and that the Court has to find out prima facie case against the accused.

5. In support of his argument, the learned counsel for the second respondent has drawn the attention of this Court to the following decisions: Subodh S. Salaskar v. Jayprakash M. Shah, 2008 AIR(SC) 3086 wherein the Hon''ble apex Court at para No.29, held as under: 29. The cheques were post dated ones. Admittedly they were issued in the year 1996. They were presented before the bank on a much later date. They were in fact presented only on 10.01.2001. When the cheques were issued, the accounts were operative. Even assuming that the account was closed subsequently the same would not mean that the appellant had an intention to cheat when the post dated cheques were issued. Even otherwise the allegations made in the complaint petition, even if given face value and taken to be correct in its entirety do not disclose commission of an offence under Section 420 of the Indian Penal Code. They do not satisfy the ingredients of the suit provision. It is, therefore, in the fact situation obtaining in the instant case, difficult to hold that the provisions of Section 420 of the Indian Penal Code were attracted. Inder Mohan Goswami v. State of Uttaranchal, 2008 AIR(SC) 251

and M/s. Suryalakshmi Cotton Mills Ltd v. M/s. Rajvir Industries Ltd., 2008 AIR(SC) 1683 . As per the principle enunciated in these cases, the Court can exercise inherent jurisdiction under Section 482 Cr.P.C to prevent abuse of process of law.

6. Let me consider the facts of the case on hand in the light of the above legal principle.

7. As per the case of the petitioner, the second respondent issued a cheque bearing No.017567 dated 12.09.2014 for an amount of Rs.3,65,000/- in favour of the petitioner drawn on ICICI Bank, Tilak Road Branch towards part payment of debt due to the petitioner under a promissory note dated 12.07.2014 executed by the second respondent. The petitioner presented the said cheque in State Bank of India, Barkathpura Branch for collection, but the same was returned on 16.09.2014 with an endorsement "account was closed." The petitioner informed the same to the second respondent, who, in turn requested 15 days'' time for payment of the amount. Even after expiry of 15 days time, the second respondent failed to pay the amount. Hence the petitioner, having no other alternative, filed the complaint before the trail Court against the second respondent for the offence punishable under Section 420 IPC r/w Section 156 (3) Cr.P.C.

8. On 14.12.2014 the trail Court took cognizance of offence for the offence punishable under Section 420 of IPC and issued summons to the accused for his appearance.

9. On receipt of summons, the second respondent appeared before the trail Court. After taking cognizance of offence, the petitioner examined himself as P.W.1 and marked Exs.P.1 to P.3. While the things stood thus, on 19.04.2016 the trail Court passed the impugned order discharging the second respondent of the offence punishable under Section 420 of IPC, after affording a reasonable opportunity to both parties. Hence the present Criminal Revision Case by the complainant/petitioner.

10. I have carefully scanned the impugned order and other material available on record and the written arguments submitted by both parties.

11. It is not the case of the second respondent that he did not issue the cheque bearing No.017567 dated 12.09.2014 for an amount of Rs.3,65,000/- in favour of the petitioner towards part payment of the debt due under the promissory note dated 12.07.2014. It is an admitted fact that the petitioner presented the cheque in State Bank of India, Barkathpura Branch for collection and the same was returned with the endorsement "account closed."

12. The contention of the learned counsel for the second respondent is that instead of filing a complaint under Section 138 of N.I. Act the petitioner resorted to file complaint against the second respondent for an offence punishable under Section 420 of IPC, which is not permissible.

13. If the cheque issued by the accused is dishonoured, for any reason, the complainant / payee is at liberty to file the complaint under Section 138 of N.I Act after following the procedure as contemplated under the provisions of the said Act. At the same time, the complainant is also legally entitled to file a complaint against the accused under Section 420 of IPC. It is the choice of the complainant to file the complaint either under Section 138 of N.I. Act or under Section 420 of IPC.

14. A perusal of the record further reveals that in the complaint itself, the petitioner mentioned the list of witnesses to be examined on his behalf.

15. A perusal of Section 244 Cr.P.C at a glance demonstrates that after recording of evidence if the Court feels that no case is made out, it can discharge the accused in view of Section 245 Cr.P.C.

16. In the instant case, the petitioner examined himself as P.W.1 and got marked Exs.P.1 to P.3. Ex.P.1 is the promissory note dated 12.7.2014, Ex.P.2 is the cheque dated 12.09.2014 and Ex.P.3 is the cheque return memo. The trail Court while taking cognizance of offence on 14.12.2014 passed the docket order, which reads as under: Complainant present. No further witnesses reported. Heard the complainant. Perused the contents of the Complaint and the sworn statement. It is found that there is a prima facie case to be tried for cheating. Hence, case is taken on file against Accused Sarath Kumar Reddy U/Sec.420 IPC and registered as C.C.No.727/2014. Issue summons of Accused and on payment of process. Call on 30.01.2015.

17. This clearly indicates that the trail Court has satisfied that there is a prima facie case to take cognizance of offence and proceed against the second respondent. The second respondent did not file an application for discharge. The trail Court examined P.W.1 and thereafter passed the impugned order suo moto on 19.04.2016. If there is no material to proceed further, the Court can discharge the accused in view of Section 245 Cr.P.C.

18. A perusal of the record prima facie reveals that immediately after return of the cheque, the petitioner approached the second respondent who in turn, requested 15 days time for payment. It appears that by believing the words of the second respondent the petitioner has not proceeded further as contemplated under the provisions of the N.I Act. Whether or not the second respondent issued the cheque knowing fully well that he closed the bank account has to be considered at the time of full fledged trial. Merely because, the petitioner has not complied with the statutory requirements of Section 138 of N.I. Act, that itself does not constitute a valid ground to discharge the second respondent for the offence punishable under Section 420 of IPC.

19. The other interesting aspect is that the trail Court made an observation that the petitioner failed to prove the exact date of closing of the bank account by the second respondent i.e. prior to the execution of the promissory note or prior to the issuance of the cheque. This issue involves complexity of question of fact,

which cannot be decided while exercising jurisdiction under Section 245 Cr.P.C. The trail Court also made an observation that Ex.P.3 cheque return memo is silent with regard to the exact date of closure of the bank account by the second respondent, and hence the same may not be helpful to the case of the petitioner. Merely because the date of closure of the bank account is not mentioned in Ex.P.3, that itself is not a valid ground to come to a conclusion that there is no prima facie material to proceed against the second respondent. The bank officials are the competent persons to say when the account was closed. Normally, the bank officials will be examined during the course of trial only. A perusal of Exs.P.1 to P.3 reveals that the cheque issued by the second respondent was dishonoured due to closure of the bank account by the second respondent. Whether the second respondent has closed the account before execution of the promissory note or before the issuance of the cheque will come to light only during the course of trial. Without considering all these aspects, the trail Court ought not to have discharged the second respondent for the offence punishable under Section 420 of IPC, more particularly, suo moto. The order passed by the Court below is not in accordance with law. If the impugned order is allowed to stand, certainly, it would amount to miscarriage of justice. Hence the impugned order is liable to be set aside.

20. In the result, the Criminal Revision Case is allowed, setting aside the order dated 19.04.2016 passed in C.C.No.727 of 2014 on the file of the Court of the IV Additional Chief Metropolitan Magistrate, Hyderabad. The trail Court is hereby directed to proceed with the case in accordance with law without being influenced by any of the observations made herein. As a sequel, miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

