(2010) 08 AP CK 0020

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 5478 of 2007

Kotak Securities and Others APPELLANT

Vs

State of A.P. and Another RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 141(2)

Citation : (2011) 4 BC 30

Hon'ble Judges : A. Gopal Reddy, J

Bench : Single Bench

Advocate : V. Pattabhi, for the Appellant; C.B. Rama Mohan Reddy and Mr. Sharad Sanghi, Advocates for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

A. Gopal Reddy, J.—This Criminal Petition is filed u/s 482, Cr.P.C to quash the proceedings initiated against the petitioners for the offence u/s 138 of the Negotiable Instruments Act, 1881 (for short "the Act") in C.C. No. 463 of 2007 on the file of I Additional Chief Metropolitan Magistrate, City Criminal Courts, Hyderabad.

2. The complaint allegations clearly disclose that A.1 is a juristic person and a financial establishment. A.2 to A.6 are its Directors and equally take part in its day-to-day affairs. A.7 to A.9 are the authorized representatives/signatories of A, 1-company and they procure customers on behalf of A. 1 at the instructions of A.2 to A.6. A.7 to A.9 are directly instrumental in all the transactions of A. 1-company and they sign vouchers, issue cheques, receive cash, lure customers, and therefore, A.7 to A.9 are equally responsible for the day-to-day affairs of A. 1. In the year 2005, all the accused lured the complainant about the huge profits in case he deposits his money, shares, etc., with A. 1. Hence, the complainant deposited an amount of Rs. 5,00,000/-. For due discharge of the said amount, three cheques bearing Nos. 116457, 116459 and 116458 dated 20.3.2007,

24.3.2007 and 26.3.2007 for Rs. 2,50,000/-, Rs. 1,25,000/- and Rs. 1,25,000/- respectively, drawn on HDFC Bank Limited, Raj Bhavan Road, Somajiguda, Hyderabad, were issued under the signature of A.7. When the complainant presented the said cheques for encashment, the same were dishonoured for want of sufficient funds. Therefore, the complainant got issued a legal notice dated 10.4.2007, to which A. 1 to A.6, A.8 and A.9 got issued a reply with false and baseless grounds denying the liability on their part. Hence, the complainant filed the above complaint and the learned Magistrate took cognisance of the case and issued process.

3. Mr. V. Pattabhi, learned Counsel appearing for the petitioners contended that the cheques were issued by Pradeep Mahipat - A.7 in his own name and personal capacity, but not on behalf of A.1 company and the same is evident from the cheques, which were signed by A.7. He further contended that A.1 is acting as broker company and a member of National Stock Exchange of India Limited (NSE) and Bombay Stock Exchange (BSE); that as a broker, the company purchases and sells securities on the above said Exchanges on behalf of its clients; that for the said purpose the company receives margin money from its clients and also periodical dues as and when the same arises oh account of purchase and sale of shares, which is as per the Regulations of Securities and Exchange Board of India and the Bye-laws of the Exchanges; that the complainant has opened a trading account with A.1 company and was allotted Client Code No. BBZ97 for the purpose of operation of the said trading account; and that in the reply notice the petitioners clearly stated that they have not issued any cheque to the complainant, and therefore, they are not concerned with the case. In spite of the same, the complainant impleaded the petitioners as accused and the learned Magistrate blindly taken it on file and issued process. He further contended that the entire complaint allegations do not indicate that the cheques were issued on behalf of A. 1 company, for which the other accused are Directors, and that the same were issued by A.7. In support of his contentions, the learned Counsel relied upon the judgments of the Supreme Court in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, and Ramanlal Bhailal Patel and Others Vs. State of Gujarat,

4. On the other hand, Mr. C.B. Rama Mohan Reddy, the learned Counsel appearing for the second respondent-complainant contends that as per Section 141 of the Act if the offence is committed by a company, 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, as well as company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly, and that Sub-section (2) of Section 141 of the Act envisages that where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, they deemed to be guilty of that offence and shall be liable to be proceeded u/s 138 of the Act.

Therefore, the complainant should be given an opportunity to prove that the petitioners are responsible for the offence u/s 138 of the Act.

5. I do not find any merit in the submission made by the learned Counsel for the second respondent for the simple reason that in the complaint it is nowhere alleged that the cheques were issued on behalf of A.1-company by its authorized representative. The cheques, which were dishonoured, filed along with the complaint show that the same were issued by A. 7. When the cheques were not issued in the name of A.1-company, the petitioners cannot be proceeded with for the dishonour of the same.

In view of the above, continuation of proceedings against the petitioners is nothing but abuse of process of law and the same are accordingly quashed.

In the result, the Criminal Petition is allowed.

