
(2006) 12 AP CK 0059

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 546 of 2005

L.P. Christiat

APPELLANT

Vs

Sri Ch. Suryanarayana and State of A.P.

RESPONDENT

Date of Decision : 12-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (2007) 1 ALD(Cri) 572 : (2007) 2 ALT(Cri) 57 : (2007) 1 APLJ 248 :
(2007) CriLJ 2010 : (2007) 5 RCR(Criminal) 876

Hon'ble Judges : T. Meena Kumari, J

Bench : Single Bench

Advocate : B. Nalin Kumar, for the Appellant; M. Kondala Rao and Public
Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

T. Meena Kumari, J.—The petitioner-accused filed the present petition u/s 482 of Cr. P.C. seeking to quash the proceedings in C.C. No. 1268 of 2001 on the file of the XV Metropolitan Magistrate, Nampally, Hyderabad. The brief facts of the case are that the 1st respondent filed a private complaint against the petitioner-accused herein u/s 138 of the Negotiable Instruments Act (hereinafter referred to as "the Act"), alleging that the petitioner-accused borrowed a sum of Rs. 10,500/- towards hand loan from the 1st respondent-complainant in the month of March, 1998 and in discharge of the said debt, she has executed demand promissory note on 6.3.1998 and promised to repay the same along with interest at 2% per month. The petitioner is also said to have issued a cheque bearing No. 069598, dated 11.06.2001 for a sum of Rs. 10,500/- drawn on ICICI Bank, Khairatabad Branch, Hyderabad. When the complainant presented the said cheque for payment, the same was returned on 21.8.2001 with an endorsement "funds insufficient". Then the complainant issued a legal notice dated 1.9.2001 to the petitioner herein and the said notice was returned with an endorsement "incomplete address" on 5.9.2001. The complainant, thereafter, waited for 15

days with a fond hope that the petitioner would clear the amount covered by the cheque. But, when the petitioner failed to pay the amount even thereafter, the complainant filed a private complaint before the Magistrate and the same was taken cognizance by the learned Magistrate as C.C. No. 1268 of 2001. The petitioner now, filed the present criminal petition seeking to quash the proceedings in the said C.C. No. 1268 of 2001 on the file XV Metropolitan Magistrate, Nampally, Hyderabad. Learned Counsel for the petitioner would contend that the learned Magistrate erred in taking cognizance of the complaint filed by the complainant; that the complaint is contrary to law and is barred by limitation. He would further submit that the complainant presented the cheque for the second time so as to cover the period of limitation by suppressing the issuance of earlier notice dated 11.7.2001. Learned Counsel for the petitioner submits that the petitioner is innocent and the criminal proceedings are initiated against her in abuse of the process of law. He, therefore, prayed that the petition be allowed and the proceedings initiated against the petitioners are liable to be quashed. I have perused the entire material available on record.

2. Before going to the merits of the matter, it is pertinent to note that material on record goes to show that on an earlier occasion, i.e. on 11.6.2001, the complainant has presented the cheque before the bank in question and the same was returned on 28.6.2001 with an endorsement "insufficient funds". In response to the same, the complainant issued a registered notice on 11.7.2001, for which no reply has been sent by the accused. At this stage, it is relevant to extract the provisions of Section 138 as well as 142 of the Act so as to interpret as to whether the complainant has complied with the provisions or not. Section 138 of the Act reads thus:

Dishonour of cheque for insufficiency of funds in the account: Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year or with fine which may extend to twice the amount of the cheque, or with both.

Provided that nothing contained in this Section shall apply unless:

- a) The cheque has been presented to the bank within a period of six months from the date of which it is drawn or within the period of its validity, whichever is earlier.
- b) The payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a

notice in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

c) The drawer of such cheque fails to make the payment of the said amount of money, to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation: For the purpose of this section, debt or other liability means a legally enforceable debt or other liability.

Section 142 of the Act reads:

(a) No Court shall take cognizance of an offence punishable u/s 138 except upon a complaint in writing made by the payee or, as the case may be the holder in due course of the cheque;

(b) Such complaint is made within one month of the date on which the cause of action arises under Clause (c) of the proviso to Section 138

(c) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable u/s 138.

3. Keeping in view the above provisions and the facts as narrated above, it can be said that the drawer-accused shall pay the amount due under the cheque within fifteen days on receipt of the notice issued by the complainant or drawee. But, in the instant case, the accused has neither issued the reply notice nor paid the amount. At this stage, it is curious to note that from the date of issuing the notice, i.e. on 11.7.2001, the complainant kept quiet without pursuing the action in consonance with the provisions of Section 142 of the Act, under which, the complaint is supposed to be filed within one month from the date on which the cause of action arose, i.e., within fifteen days after the issuance of the registered notice within which the accused has neither paid the amount nor given any reply.

4. At this stage, the complainant has filed the present complaint alleging that on 21.8.2001 he presented the cheque in question before the bank concerned, which has returned the same on 23.8.2001 and thereupon, he issued the registered notice on 1.9.2001, by suppressing the earlier presentation of the cheque and the consequential action by issuing registered notice dated 11.7.2001.

5. At this juncture, it is not out of place to go through the provisions of the Act so as to assess as to whether a cheque can be presented after the issuance of the statutory legal notice.

6. When the provisions of Section 138 of the Act read together with that of Section 142 of the Act, they make it clear that a cheque can be presented as many times as possible within the period of validity of the cheque, i.e., before six months from the date of its issuance, but , there can be only one cause of action. As a matter of fact, the provisions of make it clear that the cause of action

commences from the date of issuing the registered notice. Thus, from the provisions, it is crystal clear that the presentation of the cheque cannot be repeated after issuance of the statutory notice.

7. Now, coming to the facts of the case on hand, the complainant has not only suppressed the presentation of the cheque and issuance of statutory legal notice, but also failed to comply with the above provisions by representing the cheque after the issuance of the statutory legal notice for the reasons best known to him.

8. In the present facts and circumstances of the case and keeping in view the provisions of the Act, I have no hesitation to hold that the suppression of facts as to the presentation of the cheque and issuance of statutory legal notice on an earlier occasion amounts to draw an inference that there are no bonafides on the part of the complainant in approaching this Court by violating the provisions of the Act.

9. In this view of the matter, I hold that in view of the failure on the part of the complainant to avail the remedy available u/s 142 of the Act on an earlier occasion, when he issued the statutory legal notice calling upon the petitioner to pay the amount, the complainant cannot invoke the provisions of Section 138 read with 142 of the Act once again, inasmuch as the same is not impermissible under the provisions of the Act.

In *Sadanandan Bhadran Vs. Madhavan Sunil Kumar*, the Supreme Court observed thus:

The question is how the apparently conflicting provisions of the Act, one enabling the payee to repeatedly present the cheque and the other giving him only one opportunity to file a complaint for its dishonour, and that too within one month from the date of cause of action arises, can be reconciled. The Court is of the opinion that the above two provisions can be harmonised with the interpretation that on each presentation of the cheque and its dishonour a fresh right -and not cause of action-accrues in his favour. He may, therefore, without taking pre-emptory action in exercise of his such right under Clause (b) of Section 138, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. But, once he gives a notice under Clause (b) of Section 138, he forfeits such right for in case of failure of the drawer to pay the money within the stipulated time, he would be liable for the offence and the cause of action for filing the complaint will arise. Needless to say, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days from the date of the receipt of the notice by the drawer expires.

10. While taking into consideration the facts and circumstances of the case and in view of the judgment of the Supreme Court referred to above and in view of violation of the provisions of the Act by the complainant, I feel that it is a fit case wherein the proceedings initiated against the petitioner-accused can be quashed.

11. For the above said reasons, the Criminal Petition is allowed and the proceedings initiated against the petitioner in C.C. No. 1268 of 2001 on the file of the XV Metropolitan Magistrate, Nampally, Hyderabad are quashed.