
(1992) 10 AP CK 0006

In the Andhra Pradesh High Court

Case No : Criminal Petition No's. 403 and 404 of 1992

M. Venkateswara Rao

APPELLANT

Vs

Medarametla Venkateswarlu and Others

RESPONDENT

Date of Decision : 13-10-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Negotiable Instruments Laws (Amendment) Act, 1988 — Section 138, 141

Citation : (1992) 3 ALT 468 : (1993) 1 APLJ 17 : (1993) 1 CivCC 238

Hon'ble Judges : Radhakrishna Rao, J

Bench : Single Bench

Advocate : V.V.S. Rao, for the Appellant; G. Pedda Babu, Advocate for Respondent No. 1 and Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Radhakrishna Rao, J.—Since common questions arise in CrI. P. Nos. 403 and 404 of 1992, both were heard together and are being disposed of by a common judgment.

2. CrI.P. No. 403 of 1992 arises out of CC. No. 104 of 1991 and CrI.P. No. 404 of 1992 arises out of C.C. No. 105 of 1991 on the file of the learned II Additional Munsif Magistrate, Ongole. Both the Criminal Petitions were filed u/s 482 Cr.P.C. to quash the proceedings in C.C.Nos. 104 and 105 of 1991 respectively which were initiated u/s 200 Cr.P.C. and Section 138 of the Negotiable Instruments Act, 1988 (hereinafter referred to as "the Act").

3. The facts leading to the filing of the two Criminal Petitions are, briefly, as follows:

The petitioner in both the Criminal Petitions is the same. The petitioner borrowed a sum of Rs. 1,00,000/- from the first respondent in CrI.P. No. 403 of 1992 on 27-11-1990. On the same date, the petitioner executed a letter, a promissory note and also issued a post-dated cheque dt. 27-12-1990 for Rs. 1,00,000/-. The

first respondent in Crl.P. No. 403 of 1992 presented the said, cheque in Vijaya Bank at Ongole on 13-6-1991 and it was returned with an endorsement that there are insufficient funds in the account of the petitioner. Subsequently, on 17-6-1991, the first respondent in Crl.P. No. 403 of 1992 issued a notice to the petitioner bringing to his notice about the dishonour of the cheque and requesting him to arrange for the payment with interest within 15 days from the date of receipt of the notice. The said notice was received by the petitioner on 26-6-1991, to which he gave a reply dated 1-7-1991 which was received by the first respondent in Crl.P. No. 403 of 1992 on 5-7-1991. Not satisfied with the reply of the petitioner, the first respondent in Crl.P. No. 403 of 1992 filed a criminal complaint on 30-7-1991 before the learned II Additional Munsif Magistrate, Ongole u/s 200 Cr.P.C. r/w Section 138 of the Act. The learned Magistrate having found that all the requirements necessary for taking cognizance of the case have been fulfilled, took the case on file and registered the same as C.C. No. 104 of 1991.

4. Likewise, the petitioner also borrowed a sum of Rs. 72,000/- from the first respondent in Crl.P. No. 404 of 1992 on 27-11-1990. On the same day, the petitioner issued a post dated cheque dated 27-12-1990 for Rs. 72,000/-. The first respondent in Crl.P. No. 404 of 1992 presented the said cheque in Vijaya Bank, Ongole on 13-6-1991 and it was also returned with the endorsement that there are insufficient funds in the account of the petitioner. The first respondent in Crl.P. No. 404 of 1992 issued a notice dated 17-6-1991 to the petitioner bringing to his notice about the dishonour of the cheque and requesting him to arrange for the payment with interest within 15 days from the date of receipt of the notice. The petitioner gave a reply dated 1-7-1991 which was received by the first respondent in Crl.P. No. 404 of 1992 on 5-7-1991. Not satisfied with the reply of the petitioner, the first respondent in Crl.P. No. 404 of 1992 filed a criminal complaint on 30-6-1991 before the learned II Additional Munsif Magistrate, Ongole u/s 200 Cr.P.C. r/w Section 138 of the Act. The learned Magistrate having found that all the requirements necessary for taking cognizance of the case have been fulfilled, took the case on file and registered the same as C.C. No. 105 of 1991.

5. Heard the elaborate arguments of the learned counsel for the petitioner and the learned counsel for the first respondent in both the Criminal Petitions.

6. The first point urged by Sri V.V.S. Rao, the learned counsel for the petitioner, is that since the cheques in question have been issued by the petitioner on 27-11-1990 though the same were dated 27-12-1990, it must be deemed that the cheques have been drawn on 27-11-1990 itself. If that contention is accepted, the learned counsel argued, the very presentation of the cheques on 13-6-1991 is beyond the limitation period of six months and consequently, the criminal complaints filed are not maintainable.

7. Sri G. Pedda Babu, the learned counsel for the first respondent in both the Criminal Petitions attacked the argument of the learned counsel for the petitioner

by contending that the cheques in question are post-dated cheques and that if there is any limitation period prescribed for the validity of the cheques, it must be six months from the date which is found on the cheques, and not from the date on which the cheques were signed or issued.

8. Section 138 of the Act imposes punishment for dishonour of a cheque for insufficiency of funds etc. Proviso (a) to Section 138 of the Act reads as follows:

"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 on which it is drawn or within the period of its validity whichever is earlier."

9. The meaning of the word "drawn" as such is not defined in the Act. The Madras High Court had an occasion to consider the meaning of the word "drawn" in *G. Thirugnanasambandam v. R. Shanmugasundaram* 1992 (1) Bank C.L.R. 409 which case has been strongly relied upon by the learned counsel for the petitioner.

10. In the case before the Madras High Court in *G. Thirugnanasambandam's* case 1992 (1) Bank C.L.R. 409 on 13-1-1989 the petitioner therein issued a cheque post dated to 18-4-1989 for a sum of Rs. 3,50,000/- drawn on the Bank of Madhura Limited, Annamalai Nagar Branch, Chidambaram. It is alleged that the petitioner requested the respondent therein not to present the cheque before 18-4-1989. Subsequently, the respondent presented the cheque in Indian Bank, Egmore, Madras on 9-9-1989 which was returned for want of sufficient funds in the account of the petitioner. The respondent gave notice to the petitioner on 2-10-1989 bringing to his notice about the dishonour of the cheque and requesting him to arrange for the payment. The petitioner received the said notice on 9-10-1989 but refused to make the payment as demanded by the respondent alleging that the said cheque was obtained from him under coercion. Left with no option, the respondent filed a criminal complaint before the XIV Metropolitan Magistrate, Egmore, Madras. Against that, the accused/petitioner filed a Criminal Petition before the High Court of Madras u/s 482 Cr.P.C. for quashing the proceedings before the learned Magistrate. After hearing the arguments of both the sides and considering all the aspects, Padmini Jesudurai, J. held as follows:

"I have considered all these aspects and several other relevant aspects and finally hold that a cheque is drawn on the date the cheque is signed and issued by the drawer, complete in its form and not on the date the cheque bears. No legal contention has been put forward before me now for reconsideration of the above judgment. Post dated cheque is drawn not on the date the cheque bears, but on the date the drawer signs the cheque complete in its form. The complaint in the instant case shows that the cheque was signed by the petitioner complete in its form on 13-1-1989 and had also been handed over to the respondent on the same day. The cheque, therefore, though post dated to 18-4-1989, was drawn on 13-1-1989. It had been presented, whatever the reason for the late

presentation be, only on 9-9-1989 that is beyond the statutory period of six months as required by clause (a) of the proviso to Section 138 of the Act. Even on a reading of the complaint, there is non-compliance with clause (a) of the proviso and as such, offence u/s 138 of the Act is not made out."

11. So observing, the learned judge allowed the Criminal Petition and quashed the proceedings initiated by the respondent against the petitioner.

12. With great respect to the learned Judge, I am unable to agree with the conclusion arrived at by the learned Judge. In the case of an ante-dated cheque, the party is aware of the fact that the cheque has to be presented within the period of its validity, and the period of its validity as per the statute is six months. The said period of six months has to be computed from the date which the cheque bears. Similarly, for post-dated cheques, the same analogy has to be drawn and if the party intended that the cheque has to be presented on a particular date and not on the date of its execution, the date which bears on the cheque alone has to be taken into consideration for the purpose of its validity. Therefore, it follows that the validity of the cheque in the case of an ante-dated cheque runs from the date which bears on the cheque and in the case of a postdated cheque also, the validity of the cheque runs from the date contained on the instrument for a period of six months. If we give the above meaning, we can say that we are construing Section 138 of the Act in the proper perspective. Section 138 of the Act contemplates the period of six months or the period of its validity, whichever is earlier. The first part of the Section covers the cases where the cheques are ante-dated. Therefore, the reasonable construction that has to be placed to compute the period of an instrument is from the date contained on the instrument but not from the date on which it has been signed or prepared by the party concerned. By virtue of ante-dating and post-dating the cheques, the parties agree to a particular recourse of presenting the document duly taking into account the validity of the instrument. In that context, though the instrument was drawn or prepared on a particular date, the exact meaning of the word "drawn" has to be given effect to with reference to the date which the instrument or the cheque bears. If that is not so, there would be no necessity for the parties to ante-date or post-date the cheques and all the cheques would be deemed to have been drawn when they are signed or prepared. After all, the provision of cheque facility is only to help the people in their business transactions according to the exigencies of the situation and to say that the cheque is drawn on the date of its preparation, it runs counter to the facility which the cheque is intended to serve. Therefore, we have to construe the date of validity of presentation of the cheque either in the case of ante-dated or post-dated cheques with reference to the date that is contained on the instrument only. In the instant case, since the cheques bear the date 27-12-1990 and they were presented on 13-6-1991, it has to be held that the cheques have been presented well within the validity period i.e., within six months from 27-12-1990.

13. The second point raised by the learned counsel for the petitioner is that

notice has been issued only to the petitioner but not to the Company (BITCORP Pvt. Ltd.,) on whose behalf the petitioner borrowed the money in the capacity of Director. In the case of cheques issued for and on behalf of a company, the company must be made a party and the director can also be made a party. In the case of a civil suit for claiming damages for recovery of money, the company as well as the maker of the instrument also have to be made a party so that the liability may be fixed on the concerned. But in the case where there are penal consequences, and as intended by the Legislature, it is for the party to choose whether the actual person who has issued the cheque has to be prosecuted or along with him the company on whose behalf he is acting. Admittedly, Section 138 of the Act contemplates the character of penal provisions. The Act does not contain any provision which says that unless and until the company, on whose behalf the cheque has been issued is impleaded as a party, the individual who has issued the cheque cannot be prosecuted. Further, Section 141 of the Act which deals with the case of offences by companies reads as follows:

"If a person committing an offence u/s 138 is 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 the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly."

14. The said Section contains a proviso to the effect that

"nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence."

15. There is no whisper in the said Section that unless and until the company, for and on behalf of which a person issued the cheque is made a party, the person should not be prosecuted. In the instant case, as mentioned already, the petitioner who is one of the Directors of the company has issued the cheques with full knowledge which were bounced and therefore, he has to bear all the consequences that follow from the bouncing of the cheques issued by him. In this case, both the first respondents chose to prosecute the petitioner who has issued the cheques for and on behalf of the company and, therefore, the complaints filed against the petitioner without impleading the company as a party are maintainable inasmuch as the penal consequences of issuing the cheques which were dishonoured ultimately lay on the person who has executed the instruments.

16. In *Dilip Kumar Jaiswal v. Debapriya Banerjee* 1 (1992) B.C. 403 a Division Bench of Calcutta High Court held that where a cheque has been issued by a limited company, it has to be held that the maker of the cheque was the limited company but not the persons or officers acting for and on behalf of the limited company. Their Lordships of the Division Bench further held that as a limited

company has to act through its instrumentality such as Director or a Secretary, no separate notices upon them are necessary to prosecute them and that a notice to the company is deemed to be a notice to the persons acting on behalf of the company. It was a case where individual notices have not been issued to the persons concerned and it was held that the same were not necessary. The said decision has no relevance to the facts of this case. In the case on hand, since the notices have been issued to the maker of the documents i.e., the petitioner, the non-impleading of the company is not a fatal circumstance which throws away the complaints which were filed against the maker of the documents.

17. In *K. Krishan Bai v. M/s. Arti Press, Sivakasi* 1 (1992) B.C. 361 the Madras High Court held that unless the company is made an accused, the person who is in charge of and responsible to the company for the conduct of the business of the company, cannot be made an accused. In that case, the cheque was issued in the name of the company and the petitioner signed the cheque in the capacity of Managing Director. It is in those circumstances that the Madras High Court held that the petitioner cannot be made an accused without making the company also an accused. But the Supreme Court in *Sheoratan Agarwal v. State of M.P.* 1984 SCC (Cri) 620 clarified its earlier decision in *State of Madras Vs. C.V. Parekh and Another*, and held that Section 10 of the Essential Commodities Act does not lay down any condition that the person-in-charge or an officer of the company may not be separately prosecuted if the company itself is not prosecuted. The Supreme Court in *Sheoratan Agarwal's* case 1984 SCC (Cri.) 620 held that each or anyone of the persons mentioned in Section 10 of the Essential Commodities Act may be separately prosecuted or along with the company.

18. It is further laid down by the Calcutta High Court in *Satish Kr. Jhunhunwalla v. Registrar of Companies* 1986 (2) Crimes 586 following the decisions of the Supreme Court that the proceedings cannot be quashed merely because the company has not been joined as an accused in the case.

19. Therefore, taking into consideration the decisions of the Supreme Court, referred to above, the decision of the Calcutta High Court in *Satish Kr. Jhunhunwalla's* case 1986 (2) Crimes 586 and also the fact that there is no provision in the Act which says that the Company also has to be prosecuted along with the person who has issued the cheque for and on behalf of the company (Section 141 as extracted above), I am of the opinion that the complaints filed against the petitioner are maintainable and they do not suffer from any infirmities whatsoever.

20. Learned counsel for the respondents has submitted that having given a reply stating that the petitioner is prepared to pay the amount and requesting the respondents not to file any criminal cases, the petitioner ought not to have abused the process of the court u/s 482 Cr.P.C. as Section 482 Cr.P.C. has been intended only to prevent the abuse of the process of the court. Section 482

Cr.P.C. can be used only to prevent the abuse of the court but not to aid or abet the persons who want to abuse the process of the court by dragging on the proceedings on one pretext or the other without any basis. Therefore, I fail to understand as to how the petitioner has filed this petition having conceded to make the payment. The very conduct of the petitioner in not making the payment and not even expressing the same after filing of the petition and finally filing this petition indicates that the petitioner abused the process of the court and he is not entitled to the relief u/s 482 Cr.P.C.

21. For all the above reasons, I see no grounds to quash the proceedings in C.C. Nos. 104 and 105 of 1991 on the file of the II Additional Munsif Magistrate, Ongole. The two criminal petitions are accordingly dismissed.