
(2006) 06 AP CK 0097

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 5639 of 2005

Maruthi College Engineering and Technology and Another

APPELLANT

Vs

Mohd. Salahuddin Ghorri and Another

RESPONDENT

Date of Decision : 28-06-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 420

Citation : (2006) 2 ALD(Cri) 282 : (2006) 3 ALT(Cri) 96 : (2006) CriLJ 4407

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : C. Praveen Kumar, for the Appellant; K. Suresh Reddy and Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

G. Yethirajulu, J.—This is a petition filed u/s 482 of the Code of Criminal Procedure, by the accused in C.C. No. 278 of 2005 to quash the proceedings filed u/s 138 of Negotiable Instruments Act, 1881 (for short "the Act") and u/s 420 of Indian Penal Code.

2. The accused borrowed an amount of Rs. 12,00,000/- from the complainant and when the complainant demanded to repay the amount, he issued six cheques and when the complainant presented the said cheques, they were returned with an endorsement "insufficient funds". The complainant issued a legal notice on 25.11.2002 to the accused attacking him to pay the amount covered under the cheques. On receipt of the said notice, the accused approached the complainant and represented that due to some unavoidable circumstances, he could not deposit the amount into bank and asked apology and requested the complainant not to initiate any legal proceedings u/s 138 of the Act and promised to repay the said amount of Rs. 12,00,000/- on or before 28.2.2003. The accused further assured the complainant by executing an

undertaking letter dated 21.12.2002, wherein the accused has promised to deposit the amount on or before 28.2.2003 and also requested to withdraw the amounts under the cheques from 1.3.2003 to 5.3.2003. The complainant believed the said representations and withheld filing of any complaint against the accused under Sections 138 of the Act and 420 IPC, because of the undertaking given by the accused that he would deposit the amount on or before 4.3.2003. The complainant before depositing the cheques into bank, contacted the accused and on his consent, the complainant deposited the cheques on 4.3.2003 for encashment. But all the cheques were again bounced and returned to the complainant along with cheque return Memo on 5.3.2003 with an endorsement "funds insufficient". The complainant, therefore, submits that the accused has cheated with dishonest intention, caused mental agony and monetary loss and actuated with dishonest intention and induced him to invest an amount of Rs. 12,00,000/- for construction of the college building. The complainant on receipt of the return memo from the bank, issued a legal notice on 13.3.2003, and as the accused failed to repay the amount, the present complaint has been filed under Sections 138 of the Act and 420 IPC.

3. The learned Counsel for the accused submitted that the cheque once bounced and after lapse of 15 days time of repayment of the amount, the limitation starts and complaint has to be filed within 30 days and as the complainant did not prefer the complaint within 30 days after the notice and the present complaint has been filed after the lapse of 30 days, therefore, barred by time and the petition in respect of Section 138 of the Act is liable to be quashed. In support of his contention a decision rendered in *Sadanandan Bhadran Vs. Madhavan Sunil Kumar*, : wherein the Supreme Court held that a cheque can be presented any number of times during the period of its validity by payee. 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 of the Act, 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 of the Act 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.

4. The learned Counsel for the respondent did not dispute the legal position. In view of the above Judgment of the Supreme Court, the prosecution in respect of Section 138 of the Act is liable to be quashed.

5. So far as Section 420 IPC is concerned, the learned Counsel for the petitioners submitted that as the accused simply requested the complainant not to lodge any complaint and he will repay the amount due under the cheques, but he has

no intention to deceive the complainant and he did not induce him to do or omit to do anything which if he is not so deceived. Therefore, he requested that the prosecution u/s 420 IPC may also be quashed, as the ingredients of Section 420 IPC are not attracted.

6. The learned Counsel for the respondent submitted that as there is clear dishonest intention on the part of the accused and he induced the complainant not to present the complaint in time and made him to postpone event on the deceitful promise that he would repay the amount. Therefore, Section 420 IPC is attracted, therefore, the complaint is not liable to be quashed.

7. Section 420 IPC reads as follows:

Cheating and dishonestly inducing delivery of property:- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

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 from the date of issuing of notice, the accused approached him dishonestly making a request to wait till 4.3.2003 promising that he would repay the amount. In view of the above circumstances, I find that there is a prima facie case for the offence u/s 420 IPC. Therefore, the prosecution in respect of Section 420 IPC is not liable to be quashed.

8. In the result, the petition is allowed in part. The prosecution against the accused for the offence u/s 138 of the Act is quashed and the prosecution for the offence u/s 420 IPC is not liable to be quashed.