

(2004) 11 AP CK 0001

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 372 of 1999

Merbank Financial Services Limited

APPELLANT

Vs

Chilipi Krish Garments (P) Ltd. and Others

RESPONDENT

Date of Decision : 09-11-2004

Acts Referred:

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

Citation : (2005) 2 ALT(Cri) 482 : (2005) CriLJ 1823 : (2005) 3 RCR(Criminal) 763

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : B. Viswanatha Reddy, for the Appellant; V.T.M. Prasad, A. Rajendra Babu and Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—This Criminal Appeal is filed as against the order of an acquittal recorded in C.C. No. 820 of 1997 on the file of the XV Metropolitan Magistrate, Hyderabad as against A4. The complaint as against A-5 was dismissed as not pressed on 20.02.1998. It is also brought to the notice of this court that as against the conviction, A-1 to A-3 preferred Criminal appeal No. 347 of 1998 on the file of the Metropolitan Sessions Judge, Hyderabad and the same is pending disposal.

2. Sri Viswanadha Reddy, learned counsel representing the appellant-complainant would submit that there is a specific averment in the complaint as against A-4. Apart from this aspect of the matter, P.W.1 specifically deposed that A-2 to A-5 approached the complainant on behalf of A-1 company, who have been looking after the day-to-day affairs of A-1 company and they entered into an agreement for the purpose of bill discounting facility for an amount of Rs. 5 lakhs and in view of the specific stand taken by the appellant-complainant, recording of acquittal as against A-4 cannot be sustained.

3. Per contra, Sri A. Rajendra Babu, learned counsel representing A-4/R-4 would contend that even as per the evidence available on record in general, and also Exs. P2, P-10 and P-22 in particular, A-4 cannot be fastened with criminal liability. The learned counsel also would submit that the evidence of P.W.1 that A-2 to A-5 approached the complainant on behalf of A-1 company and they have been looking after the day-to-day affairs of A-1 company by itself may not be sufficient. The learned counsel also would submit that A-4 had not signed the cheques and to fasten the criminal liability as against such Director, clear and specific allegations in the complaint relating to the role played by him and also evidence in relation thereto may be necessary. In the absence of the same, the acquittal recorded by the learned Magistrate cannot be disturbed.

4. The learned counsel placed strong reliance on NEETA BHALLA v. S.M.S. PHARMACEUTICALS LIMITED, HYDERABAD AND ANR. 2002 (1) ALD (CrI.) 225 (AP) and MUKESH GUPTA v. KABSONS GAS EQUIPMENT LIMITED, HYDERABAD AND ANR., 2003 (1) ALD (CrI.) 261 (AP) in this regard.

5. Heard both the counsel.

6. The averments made in the complaint filed by M/s. Merbanc Financial Services Ltd., appellant-complainant herein are as hereunder:

The complainant is a limited company incorporated under the Companies Act and has been doing business in Hire Purchase, Lease, Bill Discounting and ICD etc. The accused approached the complainant company for providing Bill Discounting facility upto a limit of Rs. 5 lakhs. The complainant accepted for the said request. Accordingly, on 18.11.1996 the accused entered into an agreement with the complainant company. Thereafter, the accused submitted the bills and the complainant discounted the bill and paid the amount after deducting its commission. The due date for the bill discount was on 26.4.1997. It is further contended that the accused issued a cheque dated 26.4.1997 for Rs. 5 lakhs drawn on Union Bank of India, Somajiguda, Hyderabad to discharge the bill discount facility. The said cheque was signed and issued by the accused Nos.2 and 3 being the Managing Director and Joint director of accused No. 1, being they are looking after the day to day affairs of the accused No. 1 company for and on behalf of accused No. 1, with the knowledge, consent and connivance of the accused Nos. 4 and 5. The complainant presented the cheque for clearance with its banker. The said cheque was returned by the accused bank on 9.9.1997 as dishonoured with an endorsement "funds insufficient" and the same was informed to the complainant by its bankers. After receiving the said information the complainant got issued a legal notice on 19.9.1997 demanding the accused to pay the cheque equivalent amount within 15 days from the date of receipt of the notice. The said legal notice was duly served on all the accused Nos. 1 to 3 and 5. Accused No. 4 refused to receive the same. But, the accused neither gave any reply nor paid the amount. It is further contended that the accused issued cheque with dishonest intention to have a wrongful gain for themselves and to cause wrongful loss to the complainant without having sufficient funds in the

account and not arranged for the payment of the cheque. Hence, in view of the same, A-1 to A-5 are punishable u/s 138 of Negotiable Instruments Act, 1881 (hereinafter in short referred to as "the Act" for the purpose of convenience).

7. As already referred to supra, complaint against A-5 was dismissed as not pressed on 20.2.1998. A-1 to A-3 preferred Criminal Appeal No. 347 of 1998 on the file of the Metropolitan Sessions Judge, Hyderabad as against the conviction and the same is pending disposal. Aggrieved by the acquittal recorded as against A-4, the present criminal appeal is filed.

8. The evidence of P.Ws.1 and 2 was recorded, Exs. P1 to P22 and Exs. D1 to D5 were marked. P.W.1 deposed in his chief-examination that on 08.8.1997 Board of Directors passed a resolution to represent the company. A-2 to A-5 approached the complainant on behalf of A-1 company, who are looking after the day-to-day affairs of A1 company. P.W.1 also deposed that on 18.11.1996 they entered into an agreement for the purpose of bill discounting facility for an amount of Rs. 5 lakhs. After deducting the interest and commission, the accused have to pay the loan within a period of 60 days. But the accused did not arrange the payments within the due date period. They presented the post-dated cheque and when sent for collection, the same was returned unpaid on 09.9.1997. Subsequently, they issued notice to all the Directors. The cheque was drawn by the Managing director and Joint director. The cheque was returned for the reason "insufficient funds". Even after receiving legal notice, the accused neither paid any amount nor gave any reply. Ex. P1 is the Board resolution dated 08.8.1997, Ex. P2 is the bill of exchange dated 28.02.1997, Exs. P3 to P9 are invoices, Ex. P10 is the cheque dated 26.4.1997, Ex. P11 is the cheque return memo dated 9.9.1997, Ex. P12 is debit advice dated 10.9.1997, Ex. P13 is the office copy of legal notice dated 19.9.1997, Ex. P14 is the receipt of Under Certificate of Posting dated 19.9.1997, Exs. P15 to P18 are postal acknowledgment cards of accused No. 1 to 3 and A5, Ex. P19 is the unsaved cover of A4, Ex. P20 is the statement of account, Ex. P21 is the true extract of Xerox copy of certificate of incorporation dated 25.6.1996, Ex. P22 is the original bill discounting agreement dated 18.11.1996.

9. P.W.1 deposed about all the details and P.W.1 also denied that the cheque is not a security and it is part of bill of exchange. P.W.2 deposed that the present case was filed for Ex. P2 invoice No. 008. Ex. D1 letter pertains to previous bill. Accused paid the amount for Ex. D1 bill. In Ex. D4 accused mentioned the amounts pertaining to Ex. D1 bill. Ex. D3 is the cover under Ex. D4 amount. They have shown in the statement of account, which is Ex. P20. In respect of invoice Nos. 14 to 16 they have received Ex. D2. As per the statement, accused had not paid the amount to them. They have not accepted the letter dated 31.3.1997. They have immediately informed orally (by telephonic call) to the accused for the same. Ex. P10 cheque dated 26.4.1997 was issued for discharge of the present case bill. They have not received any amount for this transaction. P.Ws.2 to 4 deposed in cross-examination that he had not participated in the entire

negotiations till the disbursement of the loan. P.W.1 looked after the accounts in their company and P.W.2 is not aware whether the receipts given to the accused pertains to the first transaction. He has not given any reply to Ex. D2 letter. P.W.2 also admitted that they received letter dated 31.3.1997 marked as Ex. D5. They have not given any reply to Ex. D5 letter. P.W.2 also deposed that he is not aware with whom P.W.1 talked in telephone in regard to Ex. D5 letter. They have received Ex. P10 cheque on the date of disbursement of second loan dated 01.3.1997. For the entire transaction they have been dealing with accused Nos.2 and 3. P.W.2 denied the suggestion that undated cheque was filled by him and filed this false case in order to harass and pressurize the accused. Even as per the admission of the accused in 313 Cr.P.C. examination what was presented was only undated cheque but not a blank cheque. As far as acquittal of A4 is concerned, the averments in the complaint and also the evidence of P.W.1 to the effect that A4 and A5 also accompanied the other accused, there is no other material available on record.

10. In NEETA BHALLA v. S.M.S. PHARMACEUTICALS LIMITED, HYDERABAD AND ANR. (1st cited) while dealing with

"prosecution of Directors of the company, which issued the cheque for its dishonour- Clear recitals should be there in the complaint indicating the role played by each of the accused-Directors- Solitary sentence in the complaint that "A2 to A4 are actively in management of the company" is absolutely vague and indefinite and hence complaint against the petitioner is liable to be quashed as no specific role is attributed to her in the issue of the cheque."

In fact, the learned Judge observed that

"In order to fasten vicarious liability against a Director of the company there must be clear, specific and unambiguous allegations made in the complaint. It is not as if every director of the accused-company can be roped in automatically and be proceeded with for the offence committed by the company u/s 138 of the Act. The complainant can proceed against only such persons who at the time the offence was committed by the company were in charge of and were responsible to the company for the conduct of its business. Such persons could be directors, managers, secretary or the other officers of the company. Such persons "in-charge" must mean that they were in over all control of the day-to-day business of the company or firm, as the case may be. A complaint based on wild imaginations is not a complaint at all in the eye of law. The accusation against each of the director/person/accused must be specified and unambiguous. The role played by each of the accused must be clearly stated in the complaint. The complaint if read as a whole must clearly disclose the role played by each of the Directors of the company in case of an offence committed by the company u/s 138 of the Act. Any inartistic expression used in drafting the complaint cannot by itself be a ground for quashing the proceedings; but, at the same time, no complainant can be permitted to launch prosecution against all the Directors of the Company without there being a proper foundation in the complaint, itself,

about the actual role played by them at the material point of time, when the offence is committed by the Company. No prosecution would lie against a person or persons as the case may be on the simple accusation in the complaint that such person or persons were the Director, Executive Director or an officer of the company at the material time when the offence was committed by the company. But at the same time it is equally well settled that this Court in exercise of its power u/s 482 Cr.P.C would not normally undertake any roving enquiry to find out as to the truth or otherwise of the allegations and accusations made in the complaint. The court cannot undertake any further enquiry if clear specific and unambiguous allegations are made against each of the persons arrayed as accused in the complaint about the role played at the material time when the offence is committed by the company. Mere repetition of the words incorporated in Section 141 of the Act would not meet the requirement in law to rope any and every director, or other officer, manager, secretary of the company as the case may be. There must be something more clearly stated in the complaint. A bold allegation by merely repeating those magic words mentioned in Section 141 of the Act would not meet the requirement in law to rope any and every director, or other officer, manager, secretary of the company as the case may be. There must be something more clearly stated in the complaint. A bold allegation by merely repeating those magic words mentioned in Section 141 of the Act would not be enough. But in case where the complaint discloses the factual foundation against the persons arrayed as accused, the High Court in exercise of its inherent jurisdiction cannot interdict the further enquiry and trial."

11. Strong reliance was also placed on *MUKESH GUPTA v. KABSONS GAS EQUIPMENT LIMITED, HYDERABAD AND ANR.* (2nd cited) where

"a complaint was filed against the company and also the Directors of the company and petitioner is one of the said Directors- No allegation made in the complaint that he was in charge of the business of the company- Only general allegation made that A2 to A14 connived with each other and got the cheque issued. It was held that complaint against the petitioner is not maintainable."

12. The learned Magistrate recorded reasons in detail and also had taken into consideration the fact that A2 and A3 alone had been transacting this transaction with the appellant-complainant and further in view of the fact that A4 had not issued any cheque and also if Exs. P2, P10 and P22 are taken into consideration, A-4 cannot be fastened with any criminal liability, an order of acquittal was made as against A4.

13. In the light of the reasons recorded in detail by the learned Magistrate and in view of the fact this is an appeal as against an order of acquittal, unless it is shown by the counsel for the appellant that the reasons recorded by the learned Magistrate are either perverse or based on total misappreciation of the evidence available on record, the said findings cannot be disturbed. The learned counsel was unable to show any compelling reasons so as to disturb the said findings recorded while recording the acquittal. Hence, the acquittal recorded by the

learned Magistrate against A4 is hereby confirmed.

14. No merit in the appeal and accordingly the criminal appeal shall stand dismissed.