

(2012) 03 AP CK 0104

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 208 of 2004

M/s. V.B.C. Finance and Leasing Ltd.

APPELLANT

Vs

M/s. Fine Plast Polymers Ltd. and The State of A.P.

RESPONDENT

Date of Decision : 15-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 219
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2012) 2 ALD(Cri) 90 : (2012) 3 ALT(Cri) 146

Hon'ble Judges : N.R.L. Nageswara Rao, J

Bench : Single Bench

Advocate : Tara Sarma, for the Appellant; Shyam Agarwal Legal Aid, for the Respondent

Final Decision : Allowed

Judgement

N.R.L. Nageswara Rao

1. The appeal is filed against the acquittal of the accused in C.C.No. 1633 of 1998 on the file of the Court of XV Metropolitan Magistrate, Hyderabad. According to the case of the complainant, the complainant is a Company dealing with finance and leasing and Accused No. 1 is a registered Company represented by Accused No. 2. The accused have entered into eight (8) hire purchase agreements for a sum of Rs. 38,93,000/- and installments were not properly paid and there was an understanding with regard to rearrangement of the payment of a sum of Rs. 12,35,361/- in 18 monthly installments commencing from 02-09-1997 and issued post dated cheques for Rs. 86,000/- commencing from 02-05-1998 to 02-10-1998 and when they were presented by the complainant in S.B.I. Khairathabad on 17.10.1998, they were dishonoured as per the Memo dated 20.10.1998 for want of "sufficient funds". On 31.10.1998 the complainant gave a legal notice for which the accused gave a reply with false allegations. Therefore, the complaint was filed. During the trial, PWs.1 and 2 were examined and marked Exs. P.1 to P.13.

2. After considering the evidence on record, the learned Magistrate acquitted the accused and questioning the same the present appeal is filed.

3. Now the point that arises for consideration is:

Whether the acquittal of the accused recorded by the Court below is legal and sustainable?

POINT:

After considering the evidence on record, the learned Magistrate did not accept the claim of the accused that the cheques Exs. P.2 to P.7 were handed over as a security. The lower Court having accepted that the cheques were towards the discharge of an enforceable liability after re-arrangement of the payment of the loan, has acquitted the accused on the ground that the cheques have to be presented within one month as per the agreement and all the cheques were presented on a single day i.e., on 17.10.1998 and a single statutory notice was issued under Ex. P.9 and consequently when the cheques are six in number, u/s 219 Cr.P.C., three offences of the same kind within a year has to be charged; whereas in this case each cheque has got its own cause of action and, therefore, the complaint is not maintainable and the legal notice under Ex. P.9 is not valid.

4. The accused were served by courier and since they were absent, Sri Shyam Agarwal was appointed as State Brief.

5. The learned counsel for the appellant contends that the approach of the learned Magistrate is not legal and sustainable.

6. In order to decide the issue, two factors have to be taken into consideration. Though a cheque has been issued for each month with an understanding that it should be presented immediately, there is no bar in keeping it pending and only the requirement u/s 138 of Negotiable Instruments Act, 1881 is that it shall be presented within six months from the date on which they were drawn. So far as the six cheques in this case are concerned, it is not in dispute that all the six cheques were presented within a period of six months from the time when they were given.

7. The next question is whether a single statutory notice can be given validly and whether a single prosecution is maintainable when more than six cheques are involved. So far as the first question is concerned, it has been decided by the Supreme Court in K.R. Indira Vs. Dr. G. Adinarayana, that when a common notice was issued for different cheques by two complainants it was held to be valid. The Apex court has dealt with the object of issuance of the notice and what has been mentioned is only that the requirement is meant if there is sufficient information as required under the statute about the dishonour is mentioned. Following the above decision, this Court in M. Chandrasekhar Rao Vs. V. Kutamba Rao St Anr. 2006 CRL.L.J. 1399 has held that a consolidated notice with regard to the dishonour of post-dated cheques is valid. Further more, it is to be noted that the cause of action for issuing of a notice arises after the dishonour of the cheques.

In fact, in this case, all the cheques were presented on a single day and a single notice of dishonour was received from the bank and consequently the statutory notice was given. Therefore, in view of the above circumstance, it cannot be said that there is any lacuna in the notice and consequently the finding of the lower Court cannot be sustained.

8. The next question is as to whether the institution of the complaint with regard to the six cheques as a single case is against the provisions of Section 219 Cr.P.C. It is needless to say as stated earlier that the cause of action arises when the notice of dishonour is received and in this case the notice of dishonour is for all the cheques together and, therefore, it has to be treated as a single transaction. In fact, this issue has been dealt by a Division Bench of the Bombay High Court reported in *Rajendra Bapusaheb Choudejari Vs. State of Maharashtra* AIR 2007 BOMBAY 209 = 2006-MHLJ (Cri.)-2-297 wherein it was held in paragraph No. 3 that if separate presentation of the cheques was made and separate notices of dishonour from the bank was received and separate notices were given, then it creates separate cause of action and separate cases have to be filed. It was also further held that the complainant is not prevented from combining the causes of action by covering all the instances in a single notice. In such a case, all the transactions covered by the notice would be regarded as a single transaction permitting a single trial. The Court has also referred to the decision reported in *Rajasthan Trading Company Vs. Chemos International Limited* (2007 ALL MR (Cri.) 630), wherein a single notice was issued for 27 cheques and a single complaint was found to be permissible. In fact, it is also the view of the Madras High Court in *Manjula Vs. Colgate Palmolive (India) Limited* 2007 (1) DCR - 192, and *Suryakant V Kanakia Vs. Muthukumaran* 2004-DCR-2-412 wherein it was held that Section 219 Cr.P.C. will not bar the prosecution on one complaint even if it involves more than three disputed cheques. It is also useful to refer to the decision reported in *Mukesh Birthare Vs. Deepa Sharma* 2011 CRL.L.J. 2381 wherein the Madhya Pradesh High Court has held with regard to the 16 cheques issued on different dates, when a single notice was issued after the dishonour of the cheques presented on the same date, the provisions u/s 219 Cr.P.C., have no application.

9. Therefore, in view of the above circumstances, the acquittal recorded by the Court below is not valid and the complainant has established the guilt of the accused for an offence u/s 138 of the Negotiable Instruments Act, 1881.

10. Accordingly, the appeal is allowed. The respondents/Accused Nos. 1 and 2 are found guilty for an offence u/s 138 Negotiable Instruments Act, 1881.

11. Taking into consideration the value of the cheques being Rs. 5,16,000/-, a fine amount of Rs. 7,00,000/- is imposed on the accused and, in default of payment of fine, Accused No. 2 shall undergo simple imprisonment for a period of three months and out of it, an amount of Rs. 6,50,000/- has to be paid to the complainant towards compensation. An amount of Rs. 2,000/- is granted towards fee to Sri Shyam Agarwal, who was appointed as Legal Aid Counsel, payable by

the A.P. High Court Legal Services Authority, Hyderabad.